

United States
7
Circuit Court of Appeals

For the Ninth Circuit.

AL WEATHERS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Alaska, Division No. 1.

FILED

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F. D. MONCKTON,
CLERK.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Juneau, Alaska,
For Defendant in Error.

District Court for the District of Alaska, Division
No. One.

1346-B.

Sections 1897 and 1898, C. L. A.

THE UNITED STATES OF AMERICA

vs.

AL WEATHERS, IKE WEATHERS and ER-
NEST STAGE.

Indictment.

At the regular September term of the District Court of the United States of America, within and for the District of Alaska, in the year of our Lord one thousand nine hundred and nineteen, begun and held at Juneau, in said District, beginning September 2d, 1919.

COUNT ONE.

The Grand Jurors of the United States of America, selected, empaneled, sworn, and charged within

and for the District of Alaska, accuse Al Weathers, Ike Weathers and Ernest Stage by this indictment of the crime of maliciously shooting at another person with the intent to kill, wound and maim such person, committed as follows:

The said Al Weathers, Ike Weathers and Ernest Stage, at or near Admiralty Cove, within the said District of Alaska, and within the jurisdiction of this court, on the 8th day of July, in the year of our Lord one thousand nine hundred and nineteen, did then and there unlawfully, wilfully, maliciously and feloniously shoot at another person, to wit, Alfred Knutson, with intent to kill, wound and maim him the said Knutson by then and there maliciously shooting and firing at him, the said Knutson with rifles then and there loaded with powder and leaden balls, a further description of said rifles being to the Grand Jury unknown is therefore not stated.

And so to the Grand Jurors duly selected, empaneled, sworn and charged as aforesaid, upon their oaths do say: That Al Weathers, Ike Weathers and Ernest Stage did then and there commit the crime of maliciously shooting at another person with the intent to kill, wound and maim such person, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [1*]

COUNT TWO.

The Grand Jurors of the United States of Amer-

*Page-number appearing at foot of page of original certified Transcript of Record.

ica, selected, empaneled, sworn and charged within and for the District of Alaska, further accuse AL WEATHERS, IKE WEATHERS and ERNEST STAGE by this indictment of the crime of ASSAULT WITH INTENT TO COMMIT ROBBERY, committed as follows:

The said Al Weathers, Ike Weathers and Ernest Stage, at or near ADMIRALTY COVE, within the said District of Alaska, and within the jurisdiction of this Court, on the 8th day of JULY, in the year of our Lord one thousand nine hundred and nineteen, did then and there wilfully, unlawfully and feloniously, with the intent then and there to commit the crime of robbery on the person of one Alfred Knutson, assault him the said Knutson by then and there shooting at him with rifles loaded with powder and leaden balls, a further description of said rifles is unknown to the Grand Jury and therefore not stated; they the said Al Weathers, Ike Weathers and Ernest Stage then and there committed said assault as aforesaid intending thereby to put him the said Alfred Knutson in fear and thereby and by such force and violence intending to take, steal and carry away certain fish then and there in the joint possession and control of him the said Knutson and others, they the said Knutson and others being then and there servants, agents and employees of the HOONAH PACKING COMPANY, a corporation then and there duly organized and existing as such, said fish then and there being the personal property of said company and having

theretofore been caught and then and there being held in a trap belonging to said company and situated at or near ADMIRALTY COVE aforesaid.

And so the Grand Jury duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That AL WEATHERS, IKE WEATHERS and ERNEST STAGE did then and there commit the crime of assault with intent to commit robbery, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [2]

COUNT THREE.

The Grand Jurors of the United States of America, selected, empaneled, sworn, and charged within and for the District of Alaska, further accuse AL WEATHERS, IKE WEATHERS and ERNEST STAGE by this indictment of the crime of ASSAULT WITH INTENT TO COMMIT ROBBERY, committed as follows:

The said Al Weathers, Ike Weathers and Ernest Stage, at or near ADMIRALTY COVE, within the said District of Alaska, and within the jurisdiction of this Court, on the 8th day of July, in the year of our Lord one thousand nine hundred and nineteen, did then and there wilfully, unlawfully and feloniously, with the intent then and there to commit the crime of robbery on the person of one ALFRED KNUTSON, assault him the said Knutson by then and there shooting at him with rifles loaded with powder and leaden balls, a further de-

scription of said rifles is unknown to the Grand Jury and therefore not stated; they the said Al Weathers, Ike Weathers and Ernest Stage then and there committed said assault as aforesaid intending thereby to put him the said ALFRED KNUTSON in fear and thereby and by such force and violence intending to take, steal and carry away certain fish from a scow then and there in the joint possession and control of him the said Knutson and others, as servants, agents and employees of the HOONAH PACKING COMPANY, a corporation then and there duly organized and existing as such, said fish then and there being the personal property of said company and being contained in said scow then and there situated at or near ADMIRALTY COVE aforesaid.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That AL WEATHERS, IKE WEATHERS and ERNEST STAGE did then and there commit the crime of assault with intent to commit robbery, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

JAMES A. SMISER,
United States Attorney. [3]

WITNESSES:

Alfred Knutson.	Andy Abrahamson.
Sofus Ellerson.	M. S. Whittier.
Henry J. Alexander.	Herman Mitts.
Swan Swanson.	Dr. W. A. Borland.
Iver Stenso.	Geo. L. Johnson.

Presented by W. L. Martin, Foreman of the Grand Jury, in the presence of the Grand Jury, in open court and filed in open court with the clerk of the District Court, all on this 9th day of September, 1919.

J. W. BELL,
Clerk of the District Court, Dist. of Alaska, Division No. 1.

By John T. Reed,
Deputy.

[Endorsed]: No. 1346-B. United States District Court, District of Alaska, First Division. The United States of America vs. Al Weathers, Ike Weathers and Ernest Stage. Indictment. Violation of Sections 1897 and 1898, C. L. A. A true bill. W. L. Martin, Foreman. Filed this 9th day of September, A. D. 1919. J. W. Bell, Clerk. By John T. Reed, Deputy. James A. Smiser, United States Attorney. [4]

[Caption and Title.]

Bill of Exceptions.

Be it remembered that the above-entitled cause came on regularly for trial in the above-entitled court on the — day of —, 1920, before the Hon. Robert W. Jennings, Judge of said court, pre-

siding, when the defendant and his attorneys, O. P. Hubbard and Henry Roden, and the United States Attorney, James A. Smiser, were in court.

Whereupon the following proceedings were had: A jury was duly and regularly impaneled to try this cause, and thereafter *and* the following testimony was taken and proceedings had:

Filed in the District Court, District of Alaska, First Division. April 15, 1920. J. W. Bell, Clerk. By ———, Deputy. [5]

Testimony of Captain Alfred Knutson, for the Government.

Captain ALFRED KNUTSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Will you please state your name to the jury?

A. Alfred Knutson is my name.

Q. Where were you and how were you employed during May, June and July of the year 1919?

A. I was employed for the Hoonah Packing Company.

Q. What was your business?

A. I was running one of their cannery tenders.

Q. What was the name of the boat?

A. "Forrester."

Q. What position on that boat did you hold?

A. I was master of the boat.

Q. Where were you on the morning of July 8, 1919?

(Testimony of Captain Alfred Knutson.)

A. I was laying at Admiralty Cove, Admiralty Island.

Q. Where was the boat?

A. The boat was there tied up to a dolphin.

Q. Were you on the boat at that time?

A. Yes, sir.

Q. Were there any other people on the boat at that time?

A. There was twelve besides me.

Q. Where were they at that time?

A. They were all on board.

Q. On board. When did you come into Admiralty Cove last? A. When I came in?

Q. Yes, when did you come in there?

A. I came in there the night before—that would be the 7th.

Q. The 7th, and where did you tie up?

A. I tied up to this dolphin. [8]

Q. Now, were you awakened the next morning at any time?

A. Yes, I woke up around five o'clock.

Q. What was it, if anything, that woke you up?

A. Well, I woke up by—I could hear shots fired.

Q. Where were you sleeping on the boat?

A. I was sleeping in a little cabin right back of the pilot-house, in a room there.

Q. What did you do upon hearing the shots?

A. Well, I got up.

Q. Did you look out?

A. I looked out through the pilot-house window.

Q. What did you see, if anything?

(Testimony of Captain Alfred Knutson.)

A. I seen a boat laying out on the water.

Q. Was it moving?

A. Yes, it was going slowly ahead.

Q. Was it approaching or going away from you?

A. Well, it was kind of coming towards us, like, not exactly head on.

Q. Coming towards you?

A. That way—it wasn't exactly head on, though, but it was coming towards us, like.

Q. Could you observe where the shots were coming from that you were hearing?

A. Yes, sir; those shots were coming from that boat.

Q. What did you do upon seeing that?

A. Why, I went forward where the crew slept, down in the fore-castle.

Q. Now, in going from the point you were to the fore-castle did you go through any room on the boat?

A. No, I went out from the pilot-house—I went right forward.

Q. You went straight forward? A. Forward.

Q. After you got out of the pilot-house were you under cover—was there anything over you? [9]

A. No, I was out in the open then.

Q. If this table represents the deck of the boat, about where was the pilot-house situated—tell me where to place this paper here to indicate it.

A. What does the paper indicate, now—the pilot-house?

Q. Yes.

A. The other end, then—the fore part of the boat.

(Testimony of Captain Alfred Knutson.)

Q. Where was the pilot-house with reference to that?

A. This is the fore part of the boat, and the pilot-house was placed back about,—I don't know how many feet back on the boat it is, but it is a little better than amidships—it is a little forward of amidships, and of course when I went out I went forward.

Q. Where is the forecastle?

A. Located right in the front of the boat.

Q. How far is it from the outside edge of the pilot-house over to the forecastle?

A. I don't know exactly—I never measured it, but I should judge it was around 10 or 12 feet.

Q. Now, which door of the pilot-house did you go out,—is there a door on each side?

A. There is a door on each side.

Q. Now, if the boat was laying out in this direction from you, did you get out on this side next to the boat or on the side opposite from the boat?

A. I was twice out of that pilot-house, and I don't remember which side I did go out on the last time, but I remember I went out once on this side—that is, the starboard side.

Q. But you don't remember which time that was?

A. I don't remember plainly—that is six or seven months ago.

Q. You say you came out of this pilot-house and went down to the forecastle,—for what purpose did you go down there, Captain?

A. I went down to notify the crew that was sleep-

(Testimony of Captain Alfred Knutson.)

ing there that there was a boat shooting—firing on us. [10]

Q. Where was the crew down there in the boat sleeping?

A. Well, part of the crew slept in the fore-castle, and the other part slept down in a stateroom right below the deck; about amidships is another living quarter.

Q. Was there anyone sleeping up in the part of the boat where you were before you went down there?

A. Yes, Ellison; he slept in the same room I was sleeping, and the cook, he had a room for himself.

Q. On the upper part of the boat?

A. On the upper part of the boat.

Q. After you went down into the bow of the boat, went down in the hold, and warned the men that the boat was being shot at, what did you do next?

A. Well, I came back to the pilot-house again.

Q. How did you come,—the same route,—did you take the same route—the same way?

A. I had to come out the same route—come out at the fore-castle and walk the deck back.

Q. And you came back. Where did you go then?

A. I went into the pilot-house.

Q. Do you remember which side of the pilot-house you went in? A. I don't remember now.

Q. I will ask you if any shooting was going on at that time? A. Oh, yes.

Q. I will ask you if you heard any bullets at that time?

(Testimony of Captain Alfred Knutson.)

A. Yes, I heard bullets across the boat, and you could see them splash in the water across the boat.

Q. You could hear them and see them splash in the water across the boat,—could you tell where the bullets were coming from,—the direction, I mean?

A. Those bullets came right from that boat.

Q. After you went in the pilot-house what did you do?

A. I had the engine started—I called the engineer, and he started the engine. [11]

Q. How long did you run the engine?

A. I don't remember exactly—probably three or four minutes, something like that.

Q. What was your object in starting the engine at that time?

A. Object was, I didn't know whether the boat was coming right in there on me or not, because I figured if it was I would try to get out.

Q. You were figuring if the boat was coming on to you you wanted to have your boat in motion?

A. I noticed the boat kind of guided farther out then so I stopped the engine at that time.

Q. What did you do after you noticed the boat turn out, in regard to your engine?

A. After I stopped the engine?

Q. Yes.

A. Well, I went back to the forecastle again.

Q. When you left the pilot-house the last time, or this second time, where did you go?

A. Back in the forecastle.

(Testimony of Captain Alfred Knutson.)

Q. What, if anything, happened when you were going there?

A. Well, just as I stepped out of the pilot-house there was a bullet passed me very close.

Q. How close would you say?

A. I am sure it didn't pass me over four inches.

Q. What part of your body?

A. Right—in front of my eyes.

Q. What effect, if any, did that have on you?

A. It jarred me, and throwed my head back like that, you know, and I fell right down.

Q. You fell on the deck of the boat?

A. Yes.

Q. After you fell there what did you do?

A. I got up and went down the forecastle as fast as I could. [12]

Q. You say you felt that bullet,—I mean you felt the effect of it?

A. No, but it z-z-z when it went past through the air.

Q. How about the wind,—what effect did it have on the wind—did you feel the wind?

A. That I don't remember—it was such quick action, you know, you haven't got time to—

Q. You say it passed within about four inches of your forehead?

A. Yes; I am sure it wasn't more than four, anyway.

Q. Was the shooting still going on?

A. Yes, the shooting was still going on.

Q. Could you tell from where those shots were

(Testimony of Captain Alfred Knutson.)

coming? A. It was coming from that boat.

Q. Had that boat then turned out to sea?

A. He had kind of steered out then.

Q. What is that? A. Ask the question again.

Q. Had it passed out at the time?

A. I don't know what you mean by passing out. It kind of changed its course—had steered out.

Q. Steered out to sea from the shore, is that what you mean? A. From the shore, yes.

Q. Then you went down in the bow of the boat immediately after the scrambling in this place?

A. Yes.

Q. How long did the firing continue after that?

A. I don't remember how long; it continued a few minutes—I couldn't exactly say how long—I never watched the time close.

Q. Where did this boat go then—which way did it take its course? A. After the shooting?

Q. Yes.

A. Well, she headed on about for Point Augustus—White Stone Harbor—out that direction.

[13]

Q. Was that on the opposite side of the bay from where you were—the other side of the water—the other shore line?

A. It was on the other shore line, yes, sir.

Q. Now, Captain, there is a little drawing on the board—go over there and take that pointer,—I will ask you whether that little diagram fairly represents an outline of the shore line and the position of the fish-traps as they existed on July 8, 1919?

(Testimony of Captain Alfred Knutson.)

A. Well, the traps—

Q. I say, does it fairly represent the shores?

A. Yes, it does, pretty fair.

Q. Now, beginning at the right-hand corner of that drawing I see something marked there—what is that?

A. This here is what you mean? (Indicating.)

Q. Yes. A. That represents that trap.

Q. What trap is that?

A. That is fish-trap No. 1.

Q. What is the name of it?

A. Admiralty trap No. 1.

Q. What is the little drawing over to the right of that? A. That represents a rock.

Q. Which way is Funter Bay from that point, in a general direction?

A. Funter Bay is further over this way.

Q. Is that farther to the right?

A. To the right, yes.

Q. Now, I notice two cross-marks there near that lead of the trap—what do those cross-marks represent?

A. Those represent the two dolphins that are there to tie up the boat and the scow, and we were tied to this dolphin here.

Q. Your boat was tied to the second one from the lead? A. From the lead; yes, sir.

Q. What does that oblong circle represent? [14]

A. Represents the boat, because she was laying right here.

Q. Was the boat lying in the position that oblong

(Testimony of Captain Alfred Knutson.)

circle occupies or was it in some other position?

A. Not exactly—her stern was swung more into the beach like.

Q. And her bow would be in what direction then?

A. Her bow would be, of course, tied up to the dolphin, but the stern would be swung in a little.

Q. I notice a square drawing along the side of that representation of the boat—what is that?

A. That is a representation of the scow,—we had a scow alongside of the boat at that time.

Q. On which side of the boat was that scow lying?

A. On the port side.

Q. Would that be out toward the water?

A. That would be facing out toward the water.

Q. Was it close up to the boat,—was it alongside?

A. The scow,—oh, yes, she was laying right alongside.

Q. Then the end of that scow would be more toward the shore than is drawn on that little diagram, would it,—the hind end of the boat, that is to say?

A. The stern of the boat and the stern of the scow which was tied right alongside was drawn in toward the shore.

Q. I notice another point—what is the next point represented there?

A. That represents also a fish-trap that is located there—they call it the Bay trap,—she is a pile-trap.

Q. Going down the shore line is there another trap there?

A. This mark here represents that floating-trap.

Q. Floating-trap number what?

(Testimony of Captain Alfred Knutson.)

A. No. 4, I think it is, belonging to the Hoonah Packing Company.

Q. To whom do these three traps belong, or did they belong at that time?

A. That is the Hoonah Packing Company's traps.

Q. Now, go down the shore line farther to the left,—I see [15] another mark in there,—what does that indicate?

A. That indicates also a fish-trap.

Q. What fish-trap is that?

A. I think it belongs to Hawk Inlet.

Q. That did not belong to the Hoonah Packing Company?

A. No, it did not belong to the Hoonah Company.

Q. Now, following the shore line along to what appears to be a point farther out—what point is that?

A. I don't know the exact name of that point,—I don't think you can find it on the chart.

Q. Do you know whether any company had some traps around the point?

A. I think there was a trap here at this point here.

Q. Belonging to what company?

A. I am not sure—I think it was the Hawk Inlet, as far as I know—I am not positive.

Q. Now, I notice a little square drawing on the land side of this map, up toward the right, a little square there,—what does that indicate?

A. That is the camp where the watchman stayed.

Q. Is it a cabin? A. A cabin; yes.

Q. I notice a drawing right in front of it—a straight line—what does that indicate?

(Testimony of Captain Alfred Knutson.)

A. Well, they had built up some kind of a fortification up there.

Q. A fortification was built up?

A. It was built of logs.

Q. When you first woke up and looked out in the direction of the boat that was doing the firing, indicate on the map about where you saw it, as near as you can.

A. The distance I couldn't tell exactly.

Q. I know, but indicate it on the map there,—when you first saw it, now, not when you last saw it.

A. Just about abreast of this bay trap—outside of the bay trap, when I first saw them. [16]

Q. When you last saw it where was it?

A. They were heading along out this way somewhere—I don't remember plainly, but she was going along this direction—I could not say exactly how close in she was, or how far out.

Q. You couldn't say how near to trap No. 1?

A. I couldn't say.

Q. But it was in that general direction?

A. She was going out in that direction.

Q. Is that out towards the water?

A. It is towards the water; yes.

Q. About how far would you estimate that the boat was from the "Forrester," or where the "Forrester" was lying when you first saw it during this firing?

A. Well, that is hard for me to judge exactly how close.

Q. Well, just give your best estimate.

A. I would say 2,000 feet—I don't know how close,

(Testimony of Captain Alfred Knutson.)

—that would come up about here.

Q. That is about as near an estimate as you feel you could make? A. Yes.

Q. How close was it at the nearest point you saw it to your boat?

Judge HUBBARD.—If the Court please, the witness has just answered the question.

Mr. SMISER.—No, I asked him where it was when he first saw it,—did you understand it that way?

The WITNESS.—Ask me that question again.

Q. When you first saw the boat how far was it from the “Forrester”?

A. I just said it was, as near as I can remember, just out of the Bay trap here.

Q. Did it approach nearer the “Forrester” from the time you first saw it?

A. It naturally would if you hit this way.

Q. And when you saw it last how far was it, do you know?

A. Well, that distance is pretty hard for me to say.

Q. It is pretty hard for you to estimate that. All right. I [17] will ask you if you took note of that boat during the time you were looking at it there while the shooting was going on? A. Yes, I did.

Q. Do you know what boat that was?

A. I recognized it to be the “Diana.”

Q. Now, when was the next time that you saw that boat, if ever? A. Two days after.

Q. Where did you see it?

A. I saw her down by the Sisters—Sisters Island.

Q. Were you on your boat at that time?

(Testimony of Captain Alfred Knutson.)

A. I was on the "Forrester," yes, sir.

Q. Did you have the scow with you? A. In tow.

Q. Before I leave this point I want to ask you if there was any ammunition and arms on the "Forrester" the morning that this occurred?

Mr. HUBBARD.—I think we will object to that as immaterial.

The COURT.—Yes, I do not think that is pertinent at this time—it might be in rebuttal.

Mr. SMISER.—Yes, it really would be—I will withdraw the question.

Q. I will ask you if you know whether there was anything on the scow at the time this shooting was going on? A. Yes, we had fish on her.

Q. About how many fish?

A. About two or three thousand fish, or four—I couldn't say about that.

Q. Now, while the shooting was going on, you say that you heard bullets and saw bullets splashing in the water just over the bow of the boat—just across?

A. They come just across the boat—just about between the mast and the pilot-house.

Q. Did any of the bullets strike the boat?

A. I didn't see any bullets strike the boat, but there was one that struck in the bow of the boat. [18]

Q. Where was that,—how do you know that?

A. Well, there is a plate there set on the boat to protect the wood when you are heaving the anchor.

Q. What is the plate made of? A. Sheet iron.

Q. A sheet iron plate to protect the boat from the anchor? A. Yes, sir.

(Testimony of Captain Alfred Knutson.)

Q. What did you see on that?

A. Well, there has been a bullet strike there, I see, and glanced right on on that plate.

Q. What was it that struck there?

A. There has been a bullet struck on that plate.

Q. Did you see the mark of it?

A. Why, yes, sir.

Q. Did you examine the scow?

A. Yes, I examined the scow afterwards.

Q. What did you find there, if anything?

A. I found a bullet hole in her.

Q. How many bullet holes did you find in the scow?

A. Well, there was three or four of them.

Q. Now, how about the height of the scow compared with the height of the boat, above the water line?

A. Well, now, I suppose you all have seen a fish scow?

Q. Yes.

A. You know there is a box made on the top of the deck of a fish scow,—now, if you mean from the water edge up to the top of that box?

Q. Yes. A. Or do you mean just the scow?

Q. No, I mean the top of the box.

A. I never measured it exactly, but I should judge there is 6 or 7 feet from the water line to the top of the box.

Q. How far was it from the deck of the boat to the water line? [19]

A. Well, that depends on the main deck, it is built up amidships there; it is what you call a pump-deck—

(Testimony of Captain Alfred Knutson.)

it is built up there and from the water line up to that pump-deck is about, I would say, five feet.

Q. Five feet?

A. I should judge—I never measured it, however, but three, four or five feet.

Q. Then the top of this planking that is on the scow made it a little higher than the general top of the boat, did it? A. Yes, a little higher.

Q. Was it as high as the top of the cabin?

A. Oh, no, no.

Q. So that the scow, if this table represents the boat, and the scow was situated here where I am sitting, up against it, these boards on the scow would come a little higher than the top of the boat, in a general way? A. The top of the deck, you mean?

Q. The top of the deck. A. Yes, sir.

Q. Now, you say that you saw this boat again on the 10th near the Sisters at the time that you were on your boat,—where did you see it in reference to your boat—how far away?

A. I see her going down towards Pleasant Island, down towards Icy Straits—I couldn't say how far away she was—two or three miles—two miles, or so.

Q. What did you do, if anything, when you saw that boat?

A. I changed my course—I wanted to hail her.

Q. Changed your course and went to hail that boat?

A. I wanted to hail it; yes.

Q. What was your purpose in wanting to hail it?

A. I recognized that was the same boys that was shooting at us before.

(Testimony of Captain Alfred Knutson.)

Mr. HUBBARD.—I don't believe that testimony is admissible. He is asking what his purpose was in hailing the boat on the 10th, [20] and it is incompetent and irrelevant so far as the issues in this indictment are concerned.

Mr. SMISER.—No, it is not, in my judgment.

Mr. HUBBARD.—It might come in later on in rebuttal, but at this time it is not admissible.

The COURT.—I do not see how it can possibly injure anybody—it is only an explanation of what he was doing himself, and it does not connect the defendant in any way as yet. I think he may testify what his purpose was, and if the defendant is not connected with it in any way it will be stricken.

Q. What was your purpose in hailing her, Captain?

A. The purpose was, I recognized her to be the same boat.

Mr. HUBBARD.—I thought the Court ruled that he could not answer the question as to this purpose.

The COURT.—The objection is overruled—he may testify what his purpose was.

Mr. HUBBARD.—Exception.

Q. Did you know what the name of the boat was at that time?

A. I didn't see the name on her; no.

Q. You didn't know at that time and you wanted to find out what the name of it was,—was that it?

A. Yes, I wanted to see the name of it.

Q. You wanted to see the name of it and that is the reason you hailed it, as you recognized it as the

(Testimony of Captain Alfred Knutson.)

boat that did the shooting and you wanted to see the name of the boat, is that it?

Mr. HUBBARD.—I object to that—the witness has not stated that.

The COURT.—No, he did not say that—do not lead the witness.

Mr. HUBBARD.—In connection with these objections, I would like to ask him how far that boat was away when he says he recognized it.

The COURT.—You will have an opportunity to cross-examine him.

Mr. HUBBARD.—Yes, but I want to put in an objection if the boat was the distance I understand it to be. [21]

Mr. SMISER.—That is a matter of cross-examination.

Mr. HUBBARD.—It might save time in the matter of objections,

The COURT.—You can cross-examine him fully when the time comes.

Mr. HUBBARD.—Then I will put in the objection when he answers it.

The COURT.—Answer the question.

The WITNESS.—What was the question?

Q. (By Mr. SMISER.) The question was, what was your purpose in hailing the boat and going up close to it,—what did you do that for?

A. I wanted to get up close and see the name of it.

Q. Why did you want to see the name of that boat?

A. I recognized it to be the same boat that was up there the 8th.

(Testimony of Captain Alfred Knutson.)

Q. That shot at you? A. The 8th.

Q. Now, what did you do in order to hail it?

A. I changed my course.

Q. Well, what did you do with your scow?

A. I dropped the scow—left the scow—dropped the scow.

Q. Then what did you do—did you come close to it?

A. Yes, changed my course to hail her.

Q. Then you approached it? A. Exactly.

Q. Now, when you approached the boat what did it do?

A. Well, after they run a little while they turned right around.

Mr. HUBBARD.—If the Court please, I think he has now stated what his purpose was, and what he accomplished. Now he is testifying what the boat did.

The COURT.—That is the very object of the testimony, to find out what the boat did—not what he did. The very object of this testimony is to show what the boat that he recognized as being the boat that fired the shots did.

Mr. HUBBARD.—We wish to object to any testimony as to what it did as being incompetent, irrelevant and immaterial in this case [22] at this time, what the boat did. The purpose, we understood, was that he wanted to identify the boat.

The COURT.—The objection is overruled.

Mr. HUBBARD.—The defendant saves an exception to the ruling of the Court.

Q. You say when you approached it that this boat

(Testimony of Captain Alfred Knutson.)

changed its course—in what direction did she go?

A. She came direct towards us, and I stopped—

Q. Then what happened?

A. I turned direct around; I stopped the engine and turned around.

Q. What caused you to stop, if anything?

A. I know the boat was coming towards us so I stopped—I thought he would come up alongside.

Q. What did you see, if anything, on the boat? See any men?

A. Well, when they got closer I could see they covered up her name.

Q. Did you see them do anything else?

A. I don't remember plainly now—it was so long ago, but I could see a fellow come out of the house, and he had a gun.

Q. Saw a fellow come out, and where did he come to—what part of the boat?

A. He come out of the pilot-house out on to the deck.

Q. With a gun, and what did he do?

A. Well, he got out on the deck with his gun, and he was setting something up against the rail there, little square plates,—of course what it was made of I couldn't say.

Q. Setting some square plates up against the rail of the boat? A. Exactly.

Q. Was that on the side next to you or the other side? A. The side next to me.

Q. And you saw him getting these plates and setting them up. Now, like this table is the deck of the

(Testimony of Captain Alfred Knutson.)

boat and this paper represents the plates, show how he set it up.

A. He set it up against the rail like this. [23]

Q. Set it up against the rail on the outside of the boat? A. No, on the inside.

Q. Did he set the bottom of it,—

A. For instance, this is the rail; he set it right up against the rail like this—this is the deck—you could see the top of it all the way around.

Q. You say that was on the side next to where you were? A. Yes, sir.

Q. Did you hear any words said at that time?

A. Well, I couldn't hear plainly what he said.

Q. Not plainly, but could you hear words?

A. I went right ahead with the boat.

Q. When you saw the gun and these plates—

A. I give a signal to the engineer to go ahead, and we went ahead, and they kind of crossed our stern, and they said something but I could not hear what they did say.

Q. You were giving orders to steer your boat away farther from there at that time? A. I was; yes.

Q. Did they come up ahead or astern of you?

A. No, they came across our stern again—they come up broadside, and as I went ahead, you know, they come across our stern, or back of us.

Q. Were these words that you heard spoken friendly words or angry words, or what?

A. I couldn't say—I couldn't make out anything that they did say because I couldn't hear it.

Q. Why did you turn and leave then after you had

(Testimony of Captain Alfred Knutson.)

hailed them and they came up there,—why did you turn and leave so suddenly?

A. Well, I recognized that this was the same boat that shot on the 8th, and when I see their actions I got away.

Q. When you saw their actions—what do you refer to?

A. Action,—when a man gets out his gun and sets it up I didn't think much of it and I went on. [24]

Q. That is the reason you turned your boat then?

A. That is the reason.

Q. On seeing them put these plates out?

A. That is the reason.

Q. How many plates did you see them put out?

A. One, as far as I remember.

Q. Did you see any other men on the boat at that time?

A. I don't remember plainly whether I saw one or two.

Q. What description of a man was this that you saw with the gun—what was his general build?

A. I couldn't say exactly.

Q. What position was he occupying—was he standing up straight, or otherwise?

A. Well, he was out on deck there—I don't remember whether he was standing still—I couldn't remember every motion that he made and describe it right here—I couldn't do it.

Q. You remember seeing him standing on the deck?

(Testimony of Captain Alfred Knutson.)

A. I remember him coming out of the pilot-house with the gun.

Q. Now, on the morning at Admiralty Cove when the firing was going on, did you see any men on deck at that time?

A. Well, I don't remember,—I believe I saw one but I don't remember now plainly.

Q. Captain, I will ask you whether you noticed whether or not this boat that was doing the shooting at the "Forrester" on the 8th of July that you have described was flying any flag at that time?

A. Well, she had a red piece of cloth upon the mast.

Q. A red piece of cloth on her mast? A. Yes.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. RODEN.)

Q. You didn't testify to that in the trial of the United States against Ernest Stage, did you, Captain?

A. I don't know—I suppose I wasn't asked that.
[25]

Q. You didn't testify about that, either, when the case was tried against Stage last fall, did you?

A. I don't know—I guess you didn't ask for it if I didn't testify to it,—it was so.

Q. All of this that you have testified to, this first portion of your testimony, was on the 8th of July, was it?

A. 8th of July,—explain that question.

Q. I say the first part of your testimony, everything that related to what you testified to hap-

(Testimony of Captain Alfred Knutson.)

pened in Admiralty Cove—I mean that portion of your testimony—happened on the 8th day of July?

A. The shooting; yes.

Q. And on the 10th day of July is when you did the chasing up around the Sisters?

A. The 10th, yes, sir—it was the 10th.

Q. Now, you were awakened about 5 o'clock in the morning, I understand you to say?

A. About that—about five.

Q. About that time, and you got up, and what was the first thing you did.

A. Well, I got up and went into the pilot-house.

Q. You were sleeping just back of the pilot-house, I suppose? A. Yes.

Q. And where did you see the boat then?

A. It was out in the water there, just about where I described it there.

Q. About how far away?

A. That distance is pretty hard to say—I didn't go out to take any measurement.

Q. I know you didn't—you say now it was about 2,000 feet?

A. It probably was 2,000, and maybe it was more or less. I couldn't say exactly.

Q. And the time you testified here last fall in the case against Stage, you stated it was between three and four thousand feet, [26] didn't you?

A. I don't know the distance—I didn't go out with any tape measure.

Q. Did you say that? A. What is that?

Q. At the time you testified before against Stage

(Testimony of Captain Alfred Knutson.)

you testified it was between three and four thousand feet distance from where you were on the boat to the "Forrester"?

A. Maybe I did—I never measured it at all. I didn't tell the exact distance at that time.

Q. I know you didn't measure it—it may have been three or four thousand feet?

A. I couldn't say.

Q. May it have been that far?

A. I couldn't say.

Q. Did you say it last fall when you testified against Stage,—yes or no?

A. I gave you the estimated distance.

Q. I asked you whether you said it was between three and four thousand feet?

A. Maybe it was; I don't know.

Q. I am not asking you maybe it was. I am asking you when you testified against Stage last fall if you did not say that it was between three and four thousand feet from the "Forrester" to where that boat was?

A. Probably I testified to that because probably I remembered the distances better then than I do now.

Q. And after you saw the boat out there, what did you do?

A. As I testified, I went down in the forecastle.

Q. Went down the forecastle?

A. Forecastle, where the crew was sleeping.

Q. Did you call up any of the boys below before you went down to the forecastle,—did you call up

(Testimony of Captain Alfred Knutson.)

anybody from the pilot-house before you went below? A. No, I had to go down there. [27]

Q. Didn't wake anybody up before you went down? A. I had to go down—

Q. Just answer the question,—you didn't wake anybody up before you went down to the forecastle?

A. I couldn't call anybody in the forecastle.

Q. Why didn't you say no, you didn't.

A. No,—I couldn't call them, unless I went down.

Q. You didn't call anybody, is that it?

A. I had to go down there to wake them.

Q. You didn't call anybody?

A. Not until I went down there; no, sir.

Q. Did you call Ellison?

A. He wasn't sleeping in the forecastle.

Q. I am not asking you where he was sleeping,—I didn't say he was sleeping in the forecastle, did I?

Mr. SMISER.—The witness understood you evidently to ask him if he woke up anybody in the forecastle.

Mr. RODEN.—It doesn't make any difference what he understands.

Mr. SMISER.—The witness understood you to say down in the forecastle where he was sleeping.

The WITNESS.—Certainly, I want to understand that.

The COURT.—The difficulty is that neither the questioner nor the witness waits until the question or answer is finished. You wait until Mr. Roden

(Testimony of Captain Alfred Knutson.)

gets through with his question, and then remember what the question is, and answer the question.

Q. (By Mr. RODEN.) I am asking you now, Captain, if you called anybody before you left the pilot-house?

A. If I called anybody? I may have called Ellison, but I don't remember for sure whether I called him before I went down or after I come back—I couldn't remember that.

Q. You didn't call anybody else except Mr. Ellison?

A. I possibly called Ellison—he was sleeping in the same room I was. [28]

Q. Didn't you holler to the cook, too?

A. I maybe did.

Q. You may have done it?

A. I may have done it; I couldn't say.

Q. Well, did you do it?

A. Well, I don't remember now—I maybe did.

Q. Where was the cook?

A. He was sleeping in his little stateroom there.

Q. Where was that with reference to the pilot-house?

A. There was just a partition between mine and his—just a thin partition.

Q. How long is the boat "Forrester"?

A. Well, I never measured, but I should think she is around 75—I don't think she is full 75.

Q. And what is her beam?

A. Well, that I don't know exactly, either.

Q. Well, you have been the master of the boat;

(Testimony of Captain Alfred Knutson.)

you have measured the boat, haven't you?

A. No, I never measured up the boat myself—no, I haven't, but I should judge she is around 15 feet beam.

Q. How long was the scow that was laying along-side of you?

A. Well, I never measured the scow, either, but I should judge it would be around 60 feet.

Q. Now, did you mean to say that the deck of the scow was even or below the deck of the "Forrester,"—even with the deck of the "Forrester" or was below the deck of the "Forrester" in the water? A. The deck of the scow?

Q. Yes.

A. Is about even with the deck of the "Forrester," is that what you mean?

Q. Yes,—that is what I am trying to find out.

A. You mean from the water?

Q. In the water, as the scow was on the morning of the 8th and as the "Forrester" was, was the deck of the scow level with the [29] deck of the "Forrester"? A. No.

Q. Which was higher?

A. Well, I think the deck of the "Forrester" is higher.

Q. You think the deck of the "Forrester" is higher than the scow?

A. Exactly—the pump-deck is amidships.

Q. I am talking about the main deck of the "Forrester." A. The main deck?

Q. Yes.

(Testimony of Captain Alfred Knutson.)

A. Do you know how she is constructed?

Q. Yes, I know how she is constructed.

A. You know she is built up amidships?

Q. Yes.

A. As far as I remember, the deck is built up a little higher than the deck of the scow,—you know how a box is built on a fish scow?

Q. Yes, I know how a box is built up, and it was considerably higher than the deck of the boat?

A. That would depend upon the boat.

Q. Certainly it would. You say the deck of the “Forrester” was higher than the deck of the scow?

A. I think amidships of the “Forrester” it was.

Q. Amidships, all right. How was it forward of the pilot-house? A. Forward is lower again.

Q. Which is lower? A. The deck is lower.

Q. How much lower was that?

A. I couldn't say exactly.

Q. How much lower?

A. Probably a foot or a foot and a half—maybe two feet, maybe more, I couldn't say—I never measured it.

Q. Now, the pilot-house is raised on the “Forrester,” isn't it?

A. Raised? I don't know what you mean—what do you mean by raised? [30]

Q. Is the floor of the pilot-house level with the deck of the boat where you enter the forecastle?

A. No.

Q. How much higher is it?

A. Must be quite a bit.

(Testimony of Captain Alfred Knutson.)

Q. How much? Give us an idea.

A. Give you an idea? Two or three feet—I couldn't give you exactly to the inch.

Q. I know you never measured it exactly.

A. I never did measure it.

Q. Two or three feet?

A. Something like that.

Q. Now, you had to step out of the pilot-house down about two or three feet before you could go to the forecastle, didn't you?

A. Well, you have seen her, how she is constructed there—one step from the pilot-house down to the pump-deck, and then there is two steps again down to the forward deck—the forward hatches, then you go forward to the forecastle.

Q. So the pilot-house floor is two or three feet higher than the deck where you go into the fore-castle? A. Yes, about that, I should say.

Q. How far does the raised deck on which the pilot-house stands on the "Forrester" extend in front of the pilot-house? A. Not very much.

Q. A couple of feet?

A. No, I couldn't say if there was that much or less—maybe it is 2 feet, I couldn't say. There is a little extension.

Q. And the pilot-house is located about amidships upon the "Forrester," a little bit forward?

A. Forward.

Q. All right,—and as you say, the "Forrester" is about 70 or 75 feet long?

A. Approximately—I don't think she is full 70.

(Testimony of Captain Alfred Knutson.)

Q. Where is the forecastle, as to distance, between the pilot-house [31] and the bow of the boat?

A. I never measured that distance, either, but I would judge about 10 to 12 feet.

Q. 10 to 12 feet? A. I would judge that.

Q. So in order to get into the forecastle from where you were in the pilot-house, you would take one step to the pump-deck, then you would take two steps to the other deck, then you would walk about 10 feet to get to the forecastle-head?

A. Yes, just exactly.

Q. Now, this box that is on top of the scow, what is that made out of? A. Made out of lumber.

Q. How thick is that lumber?

A. About 2-inch lumber, I guess—2-inch planks.

Q. Two-inch planks, and it practically covers all of the scow except two or three feet in the stern and the bow, and two or three inches on the side to enable a man to walk around? A. Yes, sir.

Q. And did it have a partition in there?

A. There are bins in there.

Q. Yes, they are divided by that 2-inch lumber—those two-inch boards?

A. I think that is what it is, 2-inch boards.

Q. Now, then, after you went to the forecastle you came back and had the engine started up?

A. Yes, sir.

Q. You gave the signal from the pilot-house, I suppose?

A. That I don't remember whether I gave a

(Testimony of Captain Alfred Knutson.)

signal from the pilot-house—I didn't go down, I know that, but I don't remember. I used to give signals sometimes, and other times I used to holler down the door.

Q. Now, then, you started up the engine for what purpose? A. To get out. [32]

Q. To get out? A. Yes.

Q. You were afraid?

A. Yes, I was kind of leary.

Q. Now, you testified at the preliminary hearing that took place in this case before Mr. Burton, on the 29th day of July last past, didn't you?

A. Well, yes, I was at the preliminary hearing,—28th, wasn't it? I don't remember the day.

Q. All right, let it be the 28th; and Mr. Burton asked you some questions? A. Yes, he did.

Q. And you answer them—answered his questions—he asked you what you were doing, and didn't you say to him that you reported to the engineer and told him to start to pull out and see who it was, did you say that at that time?

A. I told the engineer to pull out?

Q. Yes, so you could see who it was doing the shooting?

A. I don't remember whether the engine started for that purpose—I wanted to get out.

Q. But you didn't want to go out there to see who was doing the shooting?

A. Well, that was the intention about it, of course.

(Testimony of Captain Alfred Knutson.)

Q. Yes, but for the purpose of getting out of the way?

A. Well, for the purpose of getting out of the way—what do you mean—from where I was laying?

Q. How is that?

A. You mean from where I was laying? Of course they had to have the engine start to get out before you could do anything.

Q. Yes, I know that, but what was your purpose of going out?

A. Well, for the purpose of going out—to have the engine going for the purpose of going out.

Q. Why did you want to go out?

A. To go out.

Q. Well, why? [33] A. Why?

Q. Yes.

A. Well, I wanted to see who they were and get out of there,

Q. Were you afraid?

A. I don't remember now, whether I was afraid or not.

Q. But you didn't want to go out to see who was doing the shooting, did you?

A. Well, it was the intention to go out there.

Q. To see who was doing the shooting?

A. I shouldn't wonder.

Q. Don't you know now what purpose you went out for? A. I don't remember.

Q. You told Mr. Smiser here a few minutes ago that you went out because you were afraid?

(Testimony of Captain Alfred Knutson.)

A. I was afraid at the same time.

Q. But you told Judge Burton you went out there to see who was doing the shooting?

A. Who wouldn't be afraid?

Q. I am not asking you who wouldn't be afraid—you didn't tell Judge Burton you went out there to see who was doing the shooting?

A. Nobody started to shoot at me.

Q. Tell me whether you told him or not.

A. I suppose I told him if it is in the statement. I cannot remember every word I said six months ago—what do you expect?

Q. But you didn't go out to see who was doing the shooting—you went out to get away, didn't you?

A. No, I didn't go out, because I stopped the engine again.

Q. But you started the engine to get out of the way because you were afraid? A. Yes.

Q. That is the only reason you started the engine up? A. I started the engine up; yes.

Q. How well could you distinguish the boat three or four thousand feet distant? [34]

A. I could recognize that boat; yes.

Q. You could distinguish it very well?

A. Oh, well, it was broad daylight, sir—clear weather.

Q. And you knew then it was the "Diana," did you?

A. I recognized it to be the "Diana."

Q. Right there and then? A. I did.

(Testimony of Captain Alfred Knutson.)

Q. In what direction did the "Diana" go then after you shut down the engine?

A. Well, what course she was on I couldn't say. I explained it on the blackboard as close as I could.

Q. All right—tell us again, then which way the "Diana" went. A. All right; I will do that.

Q. You don't have to go over there—tell us in a general way.

A. I thought you wanted me to show you.

Q. All right, go and show us.

A. She was heading out this direction, but I couldn't tell exactly how close to the trap or how far out she was in this direction.

Q. So when you first saw her she was about opposite the trap Number 1, is that correct?

A. No, she was just opposite of the Bay trap here.

Q. Opposite the bay trap? A. Yes.

Q. All right, then, she went out past that No. 1 towards Funter Bay?

A. Well, now, towards Funter Bay, no—Funter Bay would be back here, according to the locality of the country there. She did not hit for Funter Bay, you see. You see, Sisters lays out here, and she was heading about for Icy Straits.

Q. All right. She was heading for Icy Straits, then,—all right. Now, you may sit down again. Now, I will ask you at the time of that preliminary hearing, on the 28th day of July, last year, if Judge Burton didn't ask you this question, and if you didn't give the following answer. He asked you, "You say you recognized [35] the boat—what

(Testimony of Captain Alfred Knutson.)

boat was it?" And you answered, "I noticed her down here at the float, the 'Diana' "—did you say that? A. At the preliminary hearing?

Q. Yes. A. Those questions?

A. Yes.

A. I guess they are. I don't remember the exact questions that was put there, where that was said—six months ago or seven months ago.

Q. Who was the engineer on that "Forrester"?

A. A fellow by the name of Bartell.

Q. Now, as engineer he came with you to the preliminary hearing, didn't he?

A. Yes, he was in there.

Q. Now, he went with you into the District Attorney's office?

Mr. SMISER.—I object—that is not cross-examination, if the Court please.

The COURT.—Objection sustained.

Mr. RODEN.—I am laying the foundation for an impeaching question, your Honor.

The COURT.—He hasn't testified to anything that happened in the District Attorney's office.

Mr. RODEN.—No, I am going to ask him if there wasn't a conversation in the District Attorney's office in which he made a certain statement.

The COURT.—Then ask him the direct question, didn't he say so and so at such and such a time, and in the presence of so and so, but I cannot tell whether it is preliminary or not. I have to rule on objections the way they are presented to me, and the way this is presented I cannot see any connec-

(Testimony of Captain Alfred Knutson.)

tion—just ask the direct question.

Q. (By Mr. RODEN.) Shortly before the preliminary examination, [36] before Judge Burton, didn't you and the engineer, whose name you say is Bartell, go into the District Attorney's office and tell the District Attorney, upon asking what the boat was, the engineer said the boat was so far out that we couldn't recognize her, and then the District Attorney said, "You can go, I don't want you"?

Mr. SMISER.—I object to that as not cross-examination, if the Court please.

The COURT.—The objection is sustained. Anything that the witness said of course you can impeach him on, but anything that the engineer said, or that somebody else said, is not impeachment.

Q. You couldn't tell that morning, honestly, now, what boat that was, could you? A. Yes, sir.

Q. You could? A. Yes, sir.

Q. No question about it? A. No.

Q. Four thousand feet away?

A. I could tell it.

Q. Then why did you go and hunt her up on the 10th, two days afterwards, if you knew what boat it was? A. Yes.

Q. Why did you hunt it up again?

A. I recognized it would be the same boat.

Q. What was your object,—you knew what boat it was before? A. Yes.

Q. You knew her name?

A. I knew her name.

(Testimony of Captain Alfred Knutson.)

Q. Then what did you go out in Icy Straits, around the Sisters there, to see what her name was for?

A. Well, I wanted to see her, yes, to see what her name was.

Q. Why?

A. She might have changed her name by that time. [37]

Q. She might have changed her name?

A. She might have—I don't know—you couldn't prove it by me because I never saw the name; all the time the name was covered up.

Q. Was the name of the boat covered up on the stern?

A. I didn't see the name on the stern—they covered up the name on the bow.

Q. You were chasing her?

A. I wasn't chasing her—I was trying to hail her.

Q. The first time you saw her she was heading for you, was she?

A. Yes, sure—ask that question again.

Q. The first time you saw the boat at the Sisters she was heading toward you?

A. No, she wasn't.

Q. Where was she? A. She was running.

Q. Which way was she heading?

A. Heading down Icy Straits.

Q. She was running away from you, wasn't she?

A. No, she was pretty near at an angle with us.

Q. Going away from you?

A. She wasn't going the same course we were; no.

(Testimony of Captain Alfred Knutson.)

Q. How long did you keep after her?

A. Well, I run awhile—I don't know how long I did run.

Q. How long did you follow her?

A. Oh, I couldn't say how long—thirty minutes, probably. I was steering the course.

Q. How close did you get up to her then?

A. When she turned around?

Q. No, after you followed her for thirty minutes?

A. I got closer to her, yes.

Q. How close?

A. It is hard to say how close—how close it is across the bay here. I don't know. I couldn't give you the exact distance— [38] it is pretty hard to do.

Q. How long have you been a captain?

A. Three or four years.

Q. Been on the water every season?

A. I have been on the water quite a few years.

Q. Quite a few years before that?

A. Quite a few years before that, you bet.

Q. You ought to be able to give us an estimate fairly accurate of distances.

A. If I say the distance a quarter of a mile or half a mile it would probably be just as close.

Q. The "Diana" was half a mile from you after you chased her for thirty minutes?

A. When she turned around?

Q. I don't know whether she turned around or not. After you chased her for thirty minutes—you said you were chasing her for thirty minutes?

(Testimony of Captain Alfred Knutson.)

A. I was running my course for thirty minutes; yes.

Q. How close were you to her then?

A. I could say in a distance of probably a quarter of a mile then.

Q. You couldn't see her name then?

A. No.

Q. You could see her stern?

A. I could see the stern of the boat; yes.

Q. Was her name on the stern?

A. I don't know.

Q. You had glasses, didn't you?

A. I had glasses, yes, but I didn't use them right at that minute.

Q. Didn't use the glasses?

A. Not at that moment; no.

Q. Did she turn around and come toward you?

A. Yes.

Q. How long was that plate on the rail that they brought forth?

A. I don't know how long they were—I should judge they were [39] a couple of feet—two or three feet.

Q. And how high, about?

A. They come just above her rail.

Q. How high above the rail?

A. Probably a foot or something like that.

Q. And they put one of those in place?

A. What is it?

Q. I say they put one of those plates against the rail?

(Testimony of Captain Alfred Knutson.)

A. As far as I can remember, yes, there was one—if there was any more I don't remember.

Q. What was the closest you ever came to them?

A. That day?

Q. Yes.

A. When I turned around they come up alongside, pretty nearly abeam of us.

Q. They came within a few feet of you?

A. No.

Q. You said they came alongside—what do you mean by coming alongside?

A. They were abeam of us.

Q. How far a distance?

A. Oh, I should judge a thousand or 1500 feet.

Q. A thousand or 1500 feet?

A. Something like that.

Q. Could you see the name then?

A. No, they covered it up.

Q. The name on the stern, was that covered up too?

A. I couldn't see the name on the stern—I couldn't see the stern.

Q. You couldn't see the stern. Couldn't you maneuver with the "Forrester" so that you could see the stern of the "Diana"?

A. No; I could see the side of it.

Q. You couldn't change your position any?

A. My position? [40]

Q. Yes.

A. Maybe—we were laying abeam like.

Q. What is the speed of the "Forrester"?

(Testimony of Captain Alfred Knutson.)

A. Why, I guess 7 or 8 miles—9 miles—an average, light.

Q. Light? A. Light, without any tow.

Q. She could overtake the "Diana," couldn't she?

A. Oh, yes, I guess so—I don't know the speed of the "Diana."

Q. You couldn't hear anything that was said on the "Diana"?

A. They were hollering something but what they did say I couldn't hear.

Q. Couldn't understand? A. I couldn't hear.

Q. Now, the scratch that you found on the anchor plate, what kind of a scratch was that?

A. It was a bullet mark.

Q. You are positive of that? A. Yes.

Q. That is a plate that is made out of sheet iron, isn't it? A. It is an iron plate.

Q. Last week you testified it was tin, didn't you?

A. If you want to go down and look at it you can see it.

Q. Last week you testified it was tin, didn't you?

A. No,—as far as I know I didn't—tin?

Q. Yes.

A. No, they don't use tin. Tin wouldn't do.

Q. You didn't say last week it was tin?

A. No, I didn't say it was tin.

Q. You don't remember now which door you went out of in the pilot-house to go down to the fore-castle the first time?

A. Not plainly I don't remember it now. I went

(Testimony of Captain Alfred Knutson.)

out, yes, but which side I went out I don't remember.

Q. How far is the front of the pilot-house from the door?

A. Ask that question again,—I went up forward, you know. [41]

Q. The front of the pilot-house is round, isn't it?

A. No, it isn't exactly round.

Q. How is it?

A. Well, you have seen her, haven't you?

Q. I am not giving testimony here. You are giving testimony. I want to know the shape of the pilot-house.

A. You have seen her. You said it was round—it isn't round.

Q. How is it—is it square?

A. No, it isn't square either.

Q. How is it?

A. The corner of the pilot-house is kind of rounded off.

Q. Now, Captain, I am not trying to mislead you.

A. No, I am not up here for an argument.

Q. Well, let us draw a line in front of the pilot-house, and then try to find out how far it is from the door to that line—in other words, how far would you have to walk to get flush with the front of the pilot-house?

A. From the fore part of the door to the fore part of the pilot-house cannot be very far.

Q. A couple of feet?

A. Of course the door goes up to about two or

(Testimony of Captain Alfred Knutson.)

three inches from the window of the pilot-house.
This is the window.

Q. How far is it from the door to the front of the pilot-house?

A. There is only one window in there, and then you have the front of the pilot-house.

Q. Tell me how far it is according to your best judgment.

A. My best judgment—I wouldn't say—possibly it was 2 feet, possibly it wasn't that much.

Q. And I suppose there is a door on each side of the pilot-house? A. A door on each side.

Q. And one in the back?

A. That door in the back goes into that little state-room where I sleep. [42]

Q. You saw a man come out of the pilot-house on the "Diana" on the 10th day of July didn't you?

A. Yes.

Q. What door of that pilot-house did he come out of?

A. I see him just as he got out of the clear of the pilot-house.

Q. What side—port side or starboard side?

A. That I don't remember. I just seen him as he got out in the open.

Q. You saw the door open?

A. I just saw him as he got out in the open.

Q. You could not see whether he came out from the port side or out from the starboard side?

A. I don't remember.

(Testimony of Captain Alfred Knutson.)

Q. Who was in your pilot-house when you saw them on the 10th?

A. Well, I don't remember if there was anybody in with me—probably Dr. Borland was in with me.

Q. Who was at the wheel?

A. As far as I remember I was at the wheel myself.

Q. You were at the wheel yourself? A. Yes.

Q. You told Mr. Smiser here a little while ago that you gave orders to steer your boat away from there. Who did you give those orders to? A. Orders?

Q. Yes.

A. Well, I give orders—signals for the engine-man to go ahead. I didn't hear that.

A. I give the signals down to the engineer, of course.

Q. Yes, but you didn't give any orders for anybody to steer your boat away from there, did you?

A. The chances are there was somebody at the wheel—I don't know. Of course I give orders. I just signaled to the engineer to go ahead.

Q. Why didn't you tell him you gave signals to the engineer—what did you tell him you gave orders for?
[43]

A. Give orders,—I had the engine going ahead if I wanted to go out.

Q. Yes, but the engine wouldn't steer the boat, would it?

A. The engine wouldn't steer the boat, but it sets her ahead.

(Testimony of Captain Alfred Knutson.)

Q. It would take her astern, too, wouldn't it, as well as ahead?

A. I guess if you give her the signal to go astern she will go astern.

Q. How much of a crew did you have on the boat at that time? A. I cannot hear you.

Q. How many were there in your crew on the 10th?

A. I believe there was 13 with me.

Q. How many did you have on the 8th?

A. We had 13.

(Whereupon court adjourned until 10 o'clock A. M.)

MORNING SESSION.

February 11, 1920, 10 A. M.

ALFRED KNUTSON on the witness-stand.

Cross-examination (Cont'd).

(By Mr. RODEN.)

Q. Captain, I would just like to ask you one or two more questions. Now on what side of the boat was this plate that you saw damaged—that the bullet hit?

A. On the "Forrester"?

Q. Yes.

A. It was on the port side.

Q. About what time of day was it when you were chasing the "Diana," as you say, on the 10th, around the Sisters?

A. I wasn't chasing her—I wanted to hail her—I didn't chase nobody.

Q. All right; you wanted to hail her?

A. Yes, sir.

(Testimony of Captain Alfred Knutson.)

Q. What time of day was that?

A. I don't remember exactly, but it was around in the afternoon. [44]

Q. Early or late in the afternoon?

A. Kind of late, I guess.

Q. Four or five o'clock.

A. Probably somewheres around there, but I couldn't remember plainly the exact time.

Mr. RODEN.—Around about that time. That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. Which side of the boat was this mark on with reference to the boat that was doing the shooting?

A. I don't understand that plainly, Mr. Smiser—which side?

Q. If I understood you, you said it was on the port side, did you?

A. Yes, sir; that is the plate on the "Forrester"?

Q. Yes.

A. That was naturally on the port side.

Q. Was that the side next to the boat that was doing the shooting, or the side away from the boat that was doing the shooting?

A. No, on the side that was doing the shooting—facing the boat.

Mr. SMISER.—That is all.

(Witness excused.)

Testimony of Sofus Ellison, for the Government.

SOFUS ELLISON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name.

A. Sofus Ellison.

Q. Where were you employed during the month of July, 1919?

A. I was employed in Hoonah, for the Hoonah Packing Company.

Q. In what capacity were you working—what were you doing? [45] A. I was foreman.

Q. Do you know a boat called the "Forrester"?

A. Yes, sir.

Q. Do you know where that boat was on July 8th, in the morning? A. Yes, sir, I do.

Q. Where was it?

A. She was at Admiralty Cove.

Q. Where were you at that time?

A. I was on the boat.

Q. Who was captain of the boat?

A. Alfred Knutson.

Q. When did you go to Admiralty Cove on the boat? A. I went there on the 7th of July.

Q. Did you remain there the night of the 7th?

A. Yes, sir.

Q. Where was the boat located at that point?

(Testimony of Sofus Ellison.)

A. It was hanging on to a dolphin at Admiralty trap—alongside of Admiralty trap.

Q. Were there any other men on the boat besides you and Captain Knutson? A. Yes, sir, there was.

Q. How many? A. There was 13 altogether.

Q. Did you sleep on the boat that night?

A. Yes.

Q. The 7th? A. Yes.

Q. Where did you sleep?

A. I slept in a stateroom right behind the pilot-house.

Q. Where did Captain Knutson sleep?

A. He slept in the same room.

Q. Where did the engineer sleep?

A. He slept below the deck aft.

Q. Where did the other men on the boat sleep?

[46]

A. The rest of the crew was sleeping in the fore-castle except the cook.

Q. Where did he sleep?

A. He was sleeping in a stateroom behind us, a little farther aft.

Q. The stateroom behind the—

A. Behind the pilot-house.

Q. Now what time in the morning did you wake up on the 8th of July? A. I woke up around 5 o'clock.

Q. Do you remember what woke you?

A. Well, the captain woke me up.

Q. What was the occasion of his waking you—what caused him to wake you?

A. Well, he said there was a pirate boat around.

(Testimony of Sofus Ellison.)

Q. What did you do upon being awakened?

A. I took it kind of easy in the start—I didn't went up right away.

Q. Did you get up out of bed?

A. Well, later on, yes; I got up a few minutes after he called me.

Q. Just a few minutes? A. Yes.

Q. What did the captain do after calling you?

A. He went out of the pilot-house—I noticed he was out, of course, because he was out even when I got up.

Q. I will ask you if at that time you heard any shots? A. Yes, sir, I did.

Q. How long did the captain remain out of the pilot-house?

A. Oh, I couldn't say exactly, you know, but a couple of minutes, I guess—around there.

Q. When he came back which way did he come?

A. He came in on the port side.

Q. From what direction?

A. I couldn't say what direction he come from.

Q. Had you gotten up then? [47]

A. Because I just got up in the pilot-house when he came in.

Q. What did he do, if anything, when he came back to where you were,—what did the captain do?

A. Well, when I got out the engine was running.

Q. What did he do?

A. The engine started up and so I asked the captain where he was going.

Q. Well, what was done then?

(Testimony of Sofus Ellison.)

A. Well, he says he was going out, he says. Well, I says, "I believe that is poor policy to do that."

Q. Why was that?

A. Because I says, "If I was you," I says, "I wouldn't take chances on it."

Q. Wouldn't take chances on it?

A. That is what I told him.

Q. Was there shooting going on at that time?

A. Yes, sir, there was.

Q. What did he do after that?

A. He went out of the same door again, on the port side, and went back and told the engineer to stop the engine.

Q. Now, I will ask you if he remained in the pilot-house after that—the captain?

A. He came in again, yes, and he said, "This is no place to be here"; he says, "We better duck below," when he came in there, so I told him I for my part wanted to stay right here, because, I says, "The bullets is coming too thick outside for me to go out."

Q. What did he do? A. He went out.

Q. Which way did he go?

A. The same door, on the port side, and he was going to the forecastle.

Q. Did you see him when he was going from the door to the forecastle? A. Yes, sir, I did.

Q. Well, now, what, if anything, happened while he was going? [48]

A. Well, there was a bullet come across.

Q. How do you know that?

A. Because I hear the whistle of the bullet.

(Testimony of Sofus Ellison.)

Q. What did you see captain do, if anything?

A. Just when he got around the corner of the pilot-house he kind of fell back—that is all he did, you know.

Q. Fell back?

A. Yes, he fell backwards.

Q. Did he fall on the deck?

A. He fell on the deck, yes, sir.

Q. And where were you standing at that time?

A. I was standing right in the pilot-house.

Q. Was there a window there?

A. Yes, sir, there was a window.

Q. Could you see through the window?

A. Yes.

Q. After he fell, what did you do?

A. Well, I looked out of the side where he fell—you know, I thought sure the bullet hit him.

Q. You thought the bullet had hit him?

A. That is just what I did.

Mr. HUBBARD.—Now, if the Court please, I object to his stating what he thought about the matter.

The COURT.—The objection is sustained.

Mr. HUBBARD.—I move to strike the answer of the witness out.

Mr. SMISER.—All right.

Q. When he fell what did he do, if anything?

A. He got up and went to the forecastle.

Q. How far away from the forecastle about was he when he fell—how many feet?

A. I should judge about 14 or 15 feet.

(Testimony of Sofus Ellison.)

Q. Did he remain where he had fallen long, or did he get up immediately after falling? [49]

A. He got up immediately.

Q. And when he went toward the forecastle how was he traveling, slow or otherwise?

A. No, he was running, of course.

MR. HUBBARD.—I move to strike that out as immaterial, whether he was moving slowly or running.

The COURT.—Overruled.

Q. During this particular part of the time I will ask you whether there were any shots being fired—whether the shooting was going on.

A. Yes, the shooting was going on.

Q. Could you tell where these shots were coming from?

A. Those shots I noticed came across the boat—came from this pirate boat, of course—came from that direction.

Q. Could you tell where any of the shots were striking with reference to the “Forrester”—in regard to the position of the “Forrester,” could you tell where any of these shots that were coming were striking?

A. Yes, some of them were striking on the upper side of the “Forrester,” between the shore and the water.

Q. How near to the “Forrester” was that where they were striking?

A. It wasn't very near in there—it was six or seven hundred feet—something like that.

(Testimony of Sofus Ellison.)

Q. Did you notice any nearer than that?

A. Well, I noticed one was stopped on the deck—struck on the deck.

Q. What was your first notice of that—how did you first notice that?

A. I saw it spinning on the forecastle-head.

Q. What time was that with reference to the time the captain was running to the forecastle?

A. Well, the captain was in the forecastle.

Q. What did this bullet that you saw spinning on the deck finally do—where did it finally land?
[50]

A. Well, just as she lost the speed she had, of course, she rolled down on the deck—on the main deck.

Q. Did you pick up that bullet at any time?

A. Yes, sir, I did, after the shooting was over.

Q. Where did you find it?

A. I found it on the side right by the step going down from the pilot-house down on the main deck.

Q. What did you do with it?

A. I picked it up.

Q. What did you do with it?

A. I turned it into the courtroom.

Q. Was that used in the trial of the other cases in this matter? A. Yes, sir.

Q. I will ask you to look at that bullet and state whether that is the one.

A. Yes, sir, that is the one.

Mr. SMISER.—I ask that it be filed as Plaintiff's Exhibit "A."

(Testimony of Sofus Ellison.)

Mr. HUBBARD.—No objection.

(Whereupon said bullet was received in evidence and marked Plaintiff's Exhibit "A.")

Q. Now, Mr. Ellison, you spoke of these bullets passing over the "Forrester" and striking beyond the "Forrester," on which side of the "Forrester" were these bullets striking?

A. They were striking on the port side.

Q. On which side was the boat that was doing the shooting located?

A. On the starboard side.

Q. Now, can you tell where these bullets were passing with reference to the "Forrester" in order to get to the place where they struck?

A. Why, I was mixed up there,—I believe the boat was on the port side and the bullets struck on the starboard side.

Q. Let us demonstrate that so we will not misunderstand each other. Place that piece of paper—let it represent the "Forrester."

Mr. HUBBARD.—If the Court please, I do not hardly think this [51] method of getting the testimony is correct. We cannot get into the record which we want to keep in this case, and I would like to have the witness testify so that the record will show what he is talking about.

The COURT.—I cannot see any objection to it. Of course it cannot get into the record, but there are many things that do not get into the record.

Q. Where was the "Forrester"?

(Testimony of Sofus Ellison.)

A. Here is the "Forrester," here is the bow and here is the stern.

Q. Now, place this paper in the direction of the boat that was doing the shooting.

A. There was the boat that was doing the shooting.

Q. Where were the bullets falling that you were speaking of? A. Up in here.

Q. Now, what direction? A. Right in here.

Q. Which side would it be that the bullets were falling, on the starboard side or port side?

Mr. HUBBARD.—I object to this. The witness has answered the question once, and there seems to be a disposition on the part of counsel not to be satisfied with his answer.

The COURT.—If you think there was any indefiniteness about it, ask the question again and let it be clear.

Q. The way you think it was—which is the port side? A. There is the port side.

Q. What is this? A. Starboard side.

Q. Where were the bullets striking with reference to the side of the "Forrester"?

A. On the starboard side.

Q. Now, could you tell where these bullets were passing with reference to this vessel to come from there over to the point—

Mr. HUBBARD.—I object to that question as too indefinite to answer what counsel is seeking to elucidate. [52]

The COURT.—I do not think so, Mr. Hubbard.

(Testimony of Sofus Ellison.)

Q. Could you tell where these bullets were passing with reference to the boat "Forrester," that came from the boat that was doing the shooting and landing on the starboard side,—that is, where did they pass in reference to the boat "Forrester"?

A. All I heard was passing between the pilot-house and the mast.

Q. Passing between the pilot-house and the mast? A. Yes, sir.

Q. After Captain Knutson went down into the forecandle the second time, did he remain there?

A. Yes, sir, he did.

Q. How long?

A. Until the shooting was over.

Q. Were the lines of the boat cut loose at the time the engine was started? A. No, sir.

Q. After the shooting was over was the boat still tied up? A. Yes.

Q. How long did the engine run?

A. Just about two or three minutes, I guess—something like that.

Q. While this shooting was going on, I will ask you if you looked out in the direction from which the shots were coming? A. Yes, sir, I did.

Q. What did you see?

A. Well, I saw this boat that was doing the firing.

Q. About how far off was it when you first saw it from the "Forrester"?

A. Around 2,000 or 2,500 feet, I guess.

Q. And what direction was it traveling?

(Testimony of Sofus Ellison.)

A. Well, she was traveling the same direction—towards us, of course, when the firing was first over.

Q. What did you do?

A. She was coming kind of to us. [53]

Q. Kind of towards you? A. Yes.

Q. How long did it continue to come in that direction? A. Not very long.

Q. What did it do then?

A. Well, they swung out.

Q. And which way did it go?

A. Slowly out from shore.

Q. During all the time, from the time you first saw it up until the time it pulled out from the shore, state whether or not the shooting was going on,—whether shooting was going on all that time.

A. The shooting was going on; yes.

Q. About how many shots would you say were fired?

A. Not for sure, I couldn't say, but between 40 and 50, anyhow.

Q. You think that is a conservative estimate?

A. Yes.

Q. Did you hear any other shots fired at that time except those coming from this boat?

A. Not as far as I noticed, because the shots that were fired—

Mr. HUBBARD.—We object—he has answered the question.

The COURT.—Yes.

Q. How long a time intervened from the time

(Testimony of Sofus Ellison.)

you first heard the shooting until the shooting ceased? A. Around 15 minutes, I guess.

Q. After the shooting was over did you at any time examine for bullet marks on the boat "Forrester"? A. Yes, sir, we did.

Q. When did you do that?

A. We done that when we got back from lifting the trap.

Q. What time was that in the day?

A. It was around 8 o'clock.

Q. Around 8 o'clock that morning?

A. Yes. [54]

Q. Did you find any bullet marks on the boat?

A. Yes, we found a mark in the sheet iron plate below the anchor chain.

Q. On which side was that?

A. That is on the port side.

Q. Describe that mark as best you can.

A. Well, it looked like a bullet being glanced—a bullet glancing on the plate—kind of dug in—paint and all was taken off—a shiny cut in the plate.

Q. I will ask you whether or not there was a scow near the boat at that time. A. Yes, sir.

Q. Where was it with reference to the boat during the time of the shooting?

The COURT.—With reference to which boat?

Mr. SMISER.—The "Forrester."

A. She was laying alongside of the "Forrester."

Q. Which side?

A. She was laying on the port side.

Q. Now, which side was that with reference to

(Testimony of Sofus Ellison.)

the boat that was doing the shooting?

A. It was the same side as the boat.

Q. Do you know how long the "Forrester" is?

A. She is around 75 feet.

Q. How long was the scow?

A. Well, I should judge the scow was between 60 and 70 feet, too—somewhere around there. I haven't measured any of them, but that is what I judge they are.

Q. Did you examine this scow at any time to see whether there were bullet marks on it?

A. Yes, sir, I did.

Q. What did you find?

A. I found three or four bullet holes.

Q. Which side of the scow were these bullet holes on? [55]

A. On the port side, of course, or on the outside from the boat.

Q. How did the deck of the scow compare with the deck of the boat in height above the water line?

A. Pretty close to the same height—a little lower, that on the boat, than the deck of the scow.

Q. Did the scow have any siding on it—planking? A. Yes.

Q. Where was that placed?

A. It was placed on top of the deck.

Q. How was this plank placed there?

A. Nailed to the stanchions—stanchions all around there, four and a half or five feet high.

Q. How did the top of the planking compare

(Testimony of Sofus Ellison.)

with the height of the main deck of the boat—was it as high, or was it higher or lower than the boat?

A. It was higher, of course.

Q. About how much higher?

A. Well, the bulwarks on the scow—it was 4 or 5 feet high—somewhere around there.

Q. About how much higher than the boat?

A. About 2 feet higher than the boat.

Q. Was it as high as the pilot-house?

A. Yes, it might be even with the floor of the pilot-house.

Q. The pilot-house, then, would be above the line of these planks? A. Yes.

Q. Did you remain at Admiralty Cove during that entire day, or did you leave there?

A. We left there.

Q. Did you usually stay or live at Admiralty Cove? A. No.

Q. Where did you stay?

A. I stayed in Hoonah.

Q. Now, at the time you saw this boat doing the shooting, I will ask you whether you saw any men on board. [56] A. No, sir, I didn't.

Q. Did you recognize the boat?

A. Yes, sir, I did.

Q. What boat was it?

A. I recognized it to be the "Diana."

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. RODEN.)

Q. Now, all this happened on the morning of

(Testimony of Sofus Ellison.)

the 8th of July, Mr. Ellison, didn't it?

A. What?

Q. The trouble out there happened on the 8th of July? A. The 8th of July.

Q. About what time in the morning?

A. Around 5 o'clock.

Q. Which way was the "Forrester" lying at the dolphin—was she lying straight out, practically parallel to the shore line, or was her stern swung in any? A. The stern was swung in.

Q. And the scow was on the port side?

A. On the port side; yes.

Q. How much of the "Forrester" remained unprotected by the scow, about?

A. Well, I couldn't say for sure, but it may be the case the scow was laying a little behind the stern—maybe not—I couldn't say for sure, but there was at least 8 feet anyway uncovered, of the boat.

Q. At least 8 feet? A. Yes.

Q. May have been more?

A. May have been more, yes.

Q. May have been a little less?

A. No, I hardly think so.

Q. Think not? [57] A. No.

Q. May it not have been six feet?

A. No, I don't think so.

Q. You were examined at the preliminary hearing on the 28th day of July, weren't you, downstairs before Judge Burton? A. Yes.

Q. You testified down below, and didn't Mr.

(Testimony of Sofus Ellison.)

Smiser ask you this question, and didn't you give the following answer? The question is, "Was there a scow lying alongside of you?" And you said, "Yes, sir, we had a big 70-foot scow alongside of us, so there was only about 6 feet of the bow of the boat stuck ahead of the scow, and there was a bullet struck right below." Did you say that?

A. Yes, I guess I said that—it is a long time ago.

Q. As I understand the proposition, Mr. Ellison, the pilot-house stands on the pump-deck, doesn't it? A. Yes, sir.

Q. And the pump-deck is about how much higher than the main deck?

A. I should judge about 2 feet, at least.

Q. At the bow of the boat it is raised again, isn't it? A. Yes, sir.

Q. As you got to the forecastle-head it begins to raise? A. Yes.

Q. Now, a man would have to step, you say, about 2 feet to get from the pilot-house down on to the main deck?

A. He has got to step some—the floor in the pilothouse is about a foot over the pump-deck—about that. I never measured it.

Q. So you would have to step down two or three feet to get to the main deck? A. Correct.

Q. Which door did you say Captain Knutson went out of when he went to the forecastle the first time?

A. I believe I was mixed up there on the port

(Testimony of Sofus Ellison.)

and the starboard side, but he went out on the starboard side—that is the truth.

Q. Did he go out by the starboard door both times when he went out? [58]

A. When I saw him; yes.

Q. That is as near as you can recollect?

A. Yes; the port side door was never open so far as I saw.

Q. Out of what size material are these planks made that form the box on top of the scow?

A. What are they made of?

Q. Yes, how thick is the material?

A. Three inches.

Q. There are two sides to this box, then there is a partition through the scow—through the center? A. Yes, sir.

Q. Is that partition made out of 3-inch planks, too? A. No, sir, made out of 2 inch.

Q. Did I understand you to say, Mr. Ellison, that the deck of the scow is as high as the pump-deck?

A. No, the lower deck—just about even with the lower deck.

Q. The lower deck or the main deck?

A. Yes, the main deck.

Q. So. How high was the rail on the “Forester”?

A. The rail?

Q. Yes.

A. About 18 inches, I guess, around there—18 to 20 inches.

Q. And the box, you say, is about 5 feet high?

(Testimony of Sofus Ellison.)

A. Yes, I would say four or five feet.

Q. So the scow on the top of the box would be about how many feet—standing in the water,—now, what would be the distance from the top of the box on the scow to the floor of the main deck?

A. Between 4 and 5 feet.

Q. Between 4 and 5 feet?

A. Yes, around there.

Q. About what would you say was the distance from the pilot-house doors to the forecastle-head, where you say Captain Knutson went in? [59]

A. I couldn't say for sure, but from the pilot-house door to the forecastle, around 18 to 20 feet, I believe.

Q. And from there to the bow of the boat is about the said distance again?

A. It is more than that.

Q. More than that—would you say 20 to 22 feet?

A. It is 23 or 25 feet, the forecastle is.

Q. Now, where was this boat that was doing the shooting, Mr. Ellison, when you first saw her with reference to the location of the "Forrester"?

A. Well, she was right on the side of the "Forrester"—right out from the side of the "Forrester."

Q. Would you say she was abeam—abeam of the "Forrester," about?

A. No, not quite—not first when I saw her. It just come around the trap—by the trap.

Q. She was rather a little behind, then, I understand—about this way? A. Yes.

(Testimony of Sofus Ellison.)

Q. How fast was the boat that was doing the shooting going then? A. Not very fast.

Q. Half speed?

A. Well, I couldn't say for sure, but it was moving slow.

Q. And about where did you see her with reference to what is called the bay trap on the picture there when you first saw her?

A. Where was she?

Q. Yes, with reference to that where was she?

A. She was just about out from the bay trap when I first saw her; then she kept on until she got a little to the side of the "Forrester" before she swung out.

Q. Did she swing out before she came to trap No. 1? A. Yes, sir.

Q. And during that period you think there were about 40 or 50 shots fired—something like that?

A. Yes. [60]

Q. And it took about 20 or 25 minutes?

A. No, about 15 or 20 minutes.

Mr. RODEN.—That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. I will ask if there was anything in the scow at the time of this shooting?

Mr. SMISER.—If the Court please, I want to ask this question which I omitted.

A. Yes.

Q. The scow that was lying on the side of the "Forrester"?

(Testimony of Sofus Ellison.)

A. There was 3,000 fish—3,000 or 4,000 fish, something like that.

Q. To whom did they belong?

A. They belonged to the Hoonah Packing Company.

Mr. SMISER.—That is all.

Recross-examination.

(By Mr. RODEN.)

Q. You didn't testify to that at the last trial, did you?

A. I don't remember if I was asked about it.

Q. Now, which direction did the boat that was doing the shooting go, Mr. Ellison, when she was through? A. She just went across the straits.

Q. Making for what, would you say—for what point over there?

A. Whitestone Harbor is the closest, I should say.

Mr. RODEN.—That is all.

(Witness excused.) [61]

Testimony of W. A. Borland, for the Government.

W. A. BORLAND, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name.

A. W. A. Borland.

Q. Where do you live? A. Hoonah.

(Testimony of W. A. Borland.)

Q. What is your business? A. Physician.

Q. Do you practice medicine at Hoonah?

A. Yes, sir.

Q. Do you occupy any office there?

A. Yes, sir; Commissioner.

Q. United States Commissioner?

A. Yes, sir.

Q. Where were you on the 10th of July, 1919?

A. Well, I left the cannery on a boat bound for Admiralty Island.

Q. What boat? A. The "Forrester."

Q. Who was the captain of the boat?

A. Knutson.

Q. In making that trip I will ask you whether you encountered another boat or saw another boat?

A. Yes, sir.

Q. I will ask you what you did with reference to that boat after seeing it?

Mr. HUBBARD.—We will reserve an exception to this testimony as not being competent. It in no way tends to prove any of the allegations in the three counts of the indictment here—it is not relevant.

The COURT.—The objection will be overruled provided the defendant is connected with it. [62]

Mr. HUBBARD.—This witness does not claim to have been at Admiralty Cove at the time of the original transaction at all, which has been testified to by the other witnesses.

The COURT.—The defendant would not have to be connected by this witness.

Mr. HUBBARD.—I reserve an exception to the

(Testimony of W. A. Borland.)

testimony of the witness on this question.

A. One of the men came and reported to the captain,—

Mr. HUBBARD.—I object to that, if the Court please.

Q. (By Mr. SMISER.) Just tell what was done.

A. They changed their course and followed the boat.

Q. About how far off would you say the boat was at that time—at the time they changed the course and followed?

A. Two and one-half or three miles—something like that.

Q. How long did they continue to follow it?

A. Well, I think it was over an hour, perhaps—something like that.

Q. Did the Forrester boat have anything with it at that time? A. Had a scow.

Q. What was done with reference to the scow?

A. Well, after they had followed the boat a considerable time, they were not making very much headway, and Captain Knutson dropped the scow.

Q. Then what did they do?

A. As soon as the scow was dropped, we had probably gone a few hundred yards when the boat that we were following turned and came back across the bow of the "Forrester."

Q. Came back across the bow of the "Forrester?"

A. Yes.

Q. Now describe what transpired between the two boats from there on.

(Testimony of W. A. Borland.)

A. Captain Knutson stopped the "Forrester," and the boat we were following turned across the bow and then stopped, and the men came out and covered up the name on the bow.

Q. What boat are you speaking of? [63]

A. The "Diana."

Q. Is that the boat that you had sighted?

A. That we were following; yes, sir.

Q. Go ahead—the men came out and did what?

A. They dropped a canvas over the name on the boat—or covered—I don't know whether it was canvas or not, and came out and placed up something against the gunwale of the boat—a square, I should judge, $2\frac{1}{2}$ or 3 feet square, and a man came out of the pilot-house with a gun, and one went up on the forecastle and the other was on the back of the pilot-house.

Q. How many men did you see?

A. I saw two at the time on the "Diana."

Q. I will ask you if anything was said by the men on the "Diana" at that time?

A. Yes, they hollered, "Come on, you square heads."

Q. Hollered, "Come on, you square heads."

A. Yes, sir.

Q. Was that at the time you saw the man with the gun? A. Just about that.

Q. Now, when Captain Knutson saw that what did he do?

A. Got scared, become frightened, turned the boat

(Testimony of W. A. Borland.)

around, said "They are going to shoot," and started away.

Q. Now, I will ask you if you know the defendant, Al Weathers? A. Yes, sir.

Q. I will ask you if you recognized the men on the boat at that time?

A. He was the only man I recognized; yes, sir.

Q. You recognized him? A. Yes, sir.

Q. I will ask you whether he was the man who had the gun?

A. Yes—well, he was the man who came out of the pilot-house with the gun; at the time that he came out I didn't recognize him as being Al Weathers, but he was the tall one.

Q. Now, do you know Al Weathers' voice? [64]

A. Well, yes, I do.

Q. I will ask you whether or not at that time you recognized his voice.

A. I thought I did at the time; yes, sir.

Q. Now, after Captain Knutson got scared and turned his boat did anything else transpire?

A. Well, they commenced guying us as we went away—they yelled at us, called us a few names, and that ended the incident.

Q. Now, you spoke of something in the shape of a plate or something set up on the boat—what boat was that set up on? A. On the "Diana."

Where was it set with reference to the boat you were on?

A. They were broadside her, and one particularly I remember was back of the pilot-house.

(Testimony of W. A. Borland.)

Q. Demonstrate to the jury; taking the table here as the "Diana," demonstrate how the plates were set up with reference to your boat.

A. Facing our boat, if this is the "Diana." and the "Forrester" was headed this way, and the pilot-house is here, the plate was set up here like that.

Q. Was that on the side that your boat was coming up? A. Yes, sir.

Q. You say that was a plate of some sort?

A. Yes.

Q. About what size?

A. Oh, I would say it was 2½ or 3 feet. I couldn't tell at that distance the size the plates were there.

Q. What, if anything, was it set against?

A. The gunwale of the boat.

Q. Did you see any man with reference to that plate—take any position with reference to that plate?

A. I don't remember whether I saw anyone get behind that or not.

Q. I will ask you whether you had glasses at that time? [65]

A. There was one pair of glasses on the boat, and I looked through them once.

Q. I will ask you whether you saw Weathers at that time? A. Yes, sir.

Q. Al Weathers? A. Yes, sir.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. HUBBARD.)

Q. Dr. Borland, you say you knew the defendant

(Testimony of W. A. Borland.)

at the time? A. Yes, sir.

Q. Where did you know him?

A. Steve Kane introduced him to me at Pete Jelich's restaurant here, and then I had seen him at different times.

Q. When was that?

A. That was a year ago last summer, the first time I saw him.

Q. That was the only time you ever saw him?

A. No, I have seen him many times.

Q. Now, can you state any other place you ever saw him except this one occasion?

A. I have seen him in Juneau several times, but I don't remember the dates.

Q. Can you state where? A. On the street.

Q. You were not acquainted with him,—did you speak to him at any time?

A. I don't remember whether I did or not.

Q. What you mean is that you saw him passing on the street?

A. Oh, I was introduced to him, yes.

Q. Can you state any other occasion except the one in the restaurant where you spoke to him?

A. Well, I have seen him on the boat and seen him at the wharf.

Q. Down at what wharf? [66] A. The float.

Q. Down at the float here? A. Yes, sir.

Q. Do you know when that was?

A. No, I couldn't tell.

Q. Couldn't tell any dates? A. No, sir.

(Testimony of W. A. Borland.)

Q. What time did you leave the cannery that morning?

A. I think it was just after dinner.

Q. It wasn't before noon—it was after dinner that you left the cannery?

A. No, I went down to the cannery about 11 o'clock, and then I had some work to do there, and I don't know what time it was, but it was afternoon, however.

Q. About what time was it when you saw this boat?

A. I couldn't say, but it was before supper. We had supper on the boat before we got to Admiralty Cove.

Q. What distance was it from the cannery to Admiralty Cove?

A. I think it was 4 hours' run or something—I don't know the distance.

Q. And you had been out, you say, how long?

A. I couldn't say, sir.

Q. What is the speed of the "Forrester"?

A. I think about 7 knots.

Q. About 7 knots with a scow?

A. Well, I don't know what her speed is—there are different size scows—I didn't pay any attention to it.

Q. Which way was the small boat from the "Forrester" when you first saw it?

A. It was headed right through the Straits, going west.

MR. HUBBARD.—Mr. District Attorney, have you got a diagram or a chart?

MR. SMISER.—I think it is downstairs some place.

(Testimony of W. A. Borland.)

Mr. HUBBARD.—I would like to have the location of this boat fixed [67] on the chart.

Q. (By Mr. HUBBARD.) Dr. Borland, this is a navigation chart—pilots' chart—about where were you when you saw this boat first—now, where did you start from?

A. Here is the Hoonah cannery right below here.

Q. And you started from there? A. Yes, sir.

Q. I will make a pencil-mark right here.

A. We went to Admiralty Cove,—we came from Hoonah, followed this course, about this vicinity, the boat heading for Admiralty trap.

Q. Just make a little mark on that just where you were, as near as you can, at the time you saw the small boat.

A. We were on a course—

Q. I don't care about the course—make a mark here where you were. The jury cannot tell anything about your course. At the time you saw the small boat first you were about the point where you have marked a cross?

A. Just about—just past the Sisters Island.

Q. Put another cross where the small boat was.

A. The small boat was to the north of us—on our port side. They were going in back of this channel, back of Sisters Island.

Q. Do I understand this was where you saw the small boat?

A. In around here—I don't know the distance—they were headed back in this channel, back of the Sisters Island.

(Testimony of W. A. Borland.)

Q. They were going behind the Sisters Island and you were on the other course?

A. We were on the course from Hoonah to Admiralty Island.

Q. Would this cross here approximately represent where they were?

A. That is about the relative position, as near as I can figure it out.

Q. And you were on a course, the course you put on here, representing where the "Forrester" was,—you were running on a course straight to Admiralty Cove? [68]

A. Perhaps if they took the direct course to Admiralty Cove they would be a little north of this, probably—in that position.

Q. You have fixed it here. You say right here is about where you were, there is Admiralty Cove—I say you were on a direct course for Admiralty Cove?

A. I suppose a boat traveling that distance would take a direct course.

Q. Your boat wouldn't go up to Sisters Island to get over there, would it? A. No, sir.

Q. You were running a direct course from Hoonah to Admiralty Cove? A. Yes, sir.

Q. According to the chart? A. Yes, sir.

Q. The small boat which you saw, which you testified you identified as the "Diana," was in a northerly direction? A. Yes, sir.

Q. And to the left of you? A. Yes, sir.

Q. And she was headed in behind the Sisters Island?

(Testimony of W. A. Borland.)

A. Yes; she continued her course behind Sisters Island.

Q. And she was some three or four miles away from you?

A. I couldn't say but I should judge it was $2\frac{1}{2}$ or three miles.

Q. Didn't you testify when you testified before in this case that the distance was greater than that—all of 5 or 6 miles away?

A. I couldn't say to that—it is very hard to judge distance on water.

Q. The captain of your boat then changed his course and headed for the small boat?

A. Yes, sir.

Q. Whatever it was? A. Yes, sir.

Q. Which you say was the "Diana"—and headed for the small boat? A. Yes, sir. [69]

Q. And you followed that small boat for something over an hour?

A. Yes, I think it was over an hour.

Q. The small boat still going on its regular course?

A. Yes, sir.

Q. Didn't change its course at all?

A. They seemed to tack back and forth.

Q. They seemed to? A. Yes, sir.

Q. Can you say they did?

A. Well, it appeared to me that way, and appeared to others of the crew.

Q. Is the channel there of such a nature that they have to tack in order to follow the channel?

A. I don't think so—there is plenty of water.

(Testimony of W. A. Borland.)

Q. Yes, according to the mark you put here there is 177 fathoms—they would not need to be tacking over to get water, and their course was behind the Sisters? A. Yes, sir.

Q. And the other course was in an entirely different direction—you turned around and followed this boat for an hour?

A. Yes, I should judge an hour.

Q. Then finding you weren't making any headway in overtaking it, you cut the scow loose?

A. Yes, sir.

Q. Then after you cut the scow loose your speed was better and you came up to or overtook the boat; is that it?

A. Yes, we overtook her more quickly, of course.

Q. Where was she when you overtook her?

The COURT.—He said they overtook her more quickly—gained speed on her.

Mr. HUBBARD.—I would like to have him say now where it was that they finally overtook or came up to her.

The COURT.—He did not say they overtook her,—he said they overtook her more quickly,—and you seem to assume that they [70] overtook her—that is what I wanted to call your attention to—what is in your mind and what is in his mind.

Q. Did you overtake the boat? A. No, sir.

Q. Did you come up to the boat? A. No, sir.

Q. You never overtook her? A. No, sir.

Q. But you followed it for an hour?

A. Approximately.

(Testimony of W. A. Borland.)

Q. Your boat was well armed? A. Yes, sir.

Q. You were well armed?

A. Well, we had guns aboard.

Q. Yes, all of you?

A. I don't know whether we all were or not—there were guns there, I know that.

Q. Where was it you were first able to identify the boat you were following?

A. I didn't identify it—the others identified it as being the same boat as had been over to Admiralty Cove—that is the reason they followed it. The captain seemed to want to convince me that that was the boat.

Q. You didn't identify it? A. No, sir.

Q. The identification was done by somebody else?

A. I identified it when we came closer.

Q. Where had you seen the boat prior to that time? A. I had seen it many times.

Q. Were you quite familiar with that boat at that time? A. Yes, sir.

Q. Can you state any places you had seen it?

A. Down at the float, down here. [71]

Q. You had seen it frequently when the boat was there? A. Yes, I have seen the boat.

Q. You say the captain decided to turn about when you got within what distance of the boat?

A. 150, possibly 200 or 250 yards.

Q. 250 yards from the boat?

A. Yes, about that far.

Q. He had gained the two or three miles distance in that time? A. Yes.

(Testimony of W. A. Borland.)

Q. Now, do you know the speed of the "Diana"?

A. No, I do not.

Q. Where was the boat at the time you got up with it? A. He didn't cut the scow loose—

Q. At the time you overtook this boat that was here had you passed the islands on either side of you?

A. We were in the channel between the island and the main land somewhere.

Q. That was entirely off of your course to Admiralty Cove, wasn't it? A. Yes, sir, decidedly.

Q. And you were on an armed vessel, and were chasing this small boat?

A. Yes, sir, I was on the "Forrester."

Q. And you followed it until you got within 250 or 300 yards, you think?

A. Yes, approximately that.

Q. And then the captain turned around?

A. Yes, sir.

Q. You spoke about some plates having been put up—were those plates put up forward of the pilot-house?

A. The one I recall was aft of the pilot-house.

Q. Were there any put up forward of the pilot-house?

A. It seems to me I remember one, but I wouldn't be positive.

Q. Put up against the railing there?

A. Yes, sir; aft of the pilot-house there was one against the railing. [72]

(Testimony of W. A. Borland.)

Q. Why didn't they put it up forward of the pilot-house?

A. I don't know—I don't recall that very distinct.

Q. You are an employee of the Hoonah Packing Company, aren't you?

A. I draw a salary from the Hoonah Packing Company.

Q. How long have you been in the employ of the company? A. Two years.

Q. You are still in the employ of the company?

A. Well, I don't know—no, I am not at this time.

Q. You are not in the employ of the company at this time?

A. Not at this time—there has no contract been made.

Q. Do you expect or intend to be with them this season? A. If I stay there I will be.

Q. Where were you on the "Forrester" while the chase was being made, Doctor—inside, outside, where were you?

A. I was part of the time on the forecastle, and up on the forward deck, and part of the time in the pilot-house.

Q. Where was Captain Knutson during this time? A. At the wheel.

Q. In the pilot-house at the wheel?

A. Part of the time he was there, and part of the time there may have been others at the wheel.

Q. Do you know where Captain Knutson was at

(Testimony of W. A. Borland.)

the time the plates were brought out that you testified about?

A. He was in the pilot-house and he was out on deck on the starboard side—went out of the pilot-house.

Q. Did he bring his crew out right on the deck?

A. I don't remember—I don't think so.

Q. Did they put up their plates and get ready?

A. No.

Q. Did they bring their arms up on deck and get ready? A. No, sir.

Q. What was the object of running this boat three or four miles, or for an hour, and then when you came to the crucial point,—was the captain in charge of the armed crew? [73]

A. The captain was in charge of the boat.

Q. Did he have military control as well as navigation control? A. No, sir, I don't think so.

Q. Weren't you in charge of the fighting forces?

A. No, absolutely not.

Q. Do you know how many men were aboard, Doctor?

A. There was the lifting crew and myself.

Q. The lifting crew—that is one man, isn't it?

A. Yes.

Q. How many men do they have in that lifting crew?

A. I don't know how many men there are in the lifting crew—the lifting crew and the boat crew.

Q. Where were this crew—were they all down below?

(Testimony of W. A. Borland.)

A. Some of them were, and pretty low, too.

Q. It was the same crew that fought at Admiralty Cove, evidently?

A. Yes, I think it was the same crew.

Q. Now, which side of the pilot-house did the party with the gun come out, Doctor?

A. Which side?

Q. Yes.

A. Why, I don't know—when I saw him he was facing towards the stern of the boat.

Q. He was facing the stern of their boat?

A. Yes, sir.

Q. You were then in the rear?

A. We were laying at right angles to their boat.

Q. Off at what distance?

A. From 150 to 250 yards.

Q. From 150 to 250 yards?

A. That is what I estimate it—I was scared myself.

Q. And you were looking rather across the boat, then, not facing it? A. Yes, sir.

Q. And she wasn't abeam of you? [74]

A. She was broadside of us.

Q. Could you see the stern of the boat very well?

A. Yes; I could see the bow, too.

Q. You could see the stern and the bow both?

A. Yes.

Q. And you saw them cover the name on the stern of the boat, did you, Doctor?

A. No, I didn't see them cover the name on the stern of the boat.

(Testimony of W. A. Borland.)

Q. Didn't you? A. No.

Q. Don't you know you saw them go and put a cloth over the name on the stern of that boat there to cover the name, on the stern? A. No, sir.

Q. You were right out so you could see if anybody could see, couldn't you?

A. I didn't see anybody cover up the name on the stern.

Q. Where was Captain Knutson at that time?

A. He was on the boat—I only saw them cover up the name on the bow.

Q. On the bow? A. Yes, sir.

Q. You were not running for the bow—you were running for the stern of the boat?

A. They were laying broadside of us.

Q. Oh, they had gotten around broadside of you now? A. Yes, sir.

Q. I thought you said a minute ago to the jury here that they were on the quarter.

A. No, I didn't say they were on the quarter.

Q. Why do you look at the District Attorney before you answer these questions?

A. I can look at the District Attorney if I want to.

Q. Do you have to look at the District Attorney before you can answer? [75]

A. No, it doesn't make any difference to me whether I look at the District Attorney or not.

Q. Do you have to look at him to see how you shall answer?

A. No, I don't care how the District Attorney

(Testimony of W. A. Borland.)

wants me to answer the questions. I am here to tell the truth, and I'll tell it, and I don't care how the District Attorney wants me to answer.

The COURT.—Very unseemly, Mr. Hubbard, very unprofessional. It is not fitting in this court, and I do not want it repeated. It is not the way to conduct a lawsuit, and I do not want this to occur again. We want to get at the truth.

Mr. HUBBARD.—I am perfectly willing to withdraw the questions if they are offensive in any way to the Court, and the answers.

The COURT.—Let us get at the truth—that is what we want.

Q. (By Mr. HUBBARD.) You had your glasses with you at the time, Doctor?

A. They were not my glasses.

The COURT.—Gentlemen of the jury, my remarks are not intended to prejudice the defendant's case in any way whatsoever. You are trying this case on evidence, and whatever I say to counsel in the case is not intended to reflect on the defendant, and you should not allow it to prejudice you in any way whatsoever. Proceed now.

Q. You say you didn't have glasses at that time?

A. I didn't have my glasses—there was a pair of glasses on the boat.

Q. Didn't you have glasses of your own with you? A. No, sir.

Q. Any glasses you used on the boat belonged to the boat?

(Testimony of W. A. Borland.)

A. Yes, sir, or belonged to somebody else—they didn't belong to me.

Q. Did not belong to you? A. No, sir.

Q. Now, tell the jury where the man came out of the pilot-house that you saw? [76]

A. He was facing the stern of the boat when I saw him.

Q. Did you see him come out of the pilot-house, Doctor?

A. I couldn't say—it was at the time he came out of the pilot-house, I suppose—he was very close to the pilot-house.

Q. You now say you suppose he came out?

A. In the position the boat lay I couldn't say whether he came out of the pilot-house, but he was facing the stern of the boat.

Q. Don't you know he was on the right-hand side of the pilot-house?

A. I couldn't tell what side of the pilot-house he came out of—he was facing the stern of the boat—he may have come out of the pilot-house on the other side.

Q. You knew the boat "Diana" quite well, didn't you, Doctor?

A. Yes, I know the "Diana"—have seen it many times.

Q. At that time you knew it was the boat "Diana"?

A. Yes, sir, the "Diana"—we agreed on that.

Q. Then the object of the pursuit of the boat wasn't for the purpose of identification?

(Testimony of W. A. Borland.)

A. That is what the captain told me, he was going to prove to me it was the "Diana."

Q. You seemed to have some doubt about it, is that it?

A. I couldn't tell at that distance.

Q. You couldn't tell the distance it was away?

A. Yes, sir; he said it was the same boat that was at Admiralty Cove.

Mr. HUBBARD.—That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. Dr. Borland, you have been asked if the "Forrester" boat had arms on it at that time and I understood you to say it did have arms on it?

A. Yes, sir, at that time.

Q. I will ask you if there was any display of arms at that time?

A. There was one fellow examining a gun on the forecastle of [77] the boat when we were two miles or a mile and a half back, and he was told to put that gun away.

Q. Was that near enough to the "Diana" at that time to be seen?

A. No, it was a long ways behind the "Diana"—it was when we first started after her.

Q. After that was there any display at all of any arms? A. No, sir.

Q. Was there any attempt to use any arms on the boat at that time?

Mr. RODEN.—We object to the question as being leading and suggestive.

(Testimony of W. A. Borland.)

The COURT.—I do not know how you could bring out that fact unless you lead the witness. You may ask him what was done with those arms, if anything.

Q. Was anything done with those arms?

A. No, sir.

Q. Were any of them displayed out on the vessel? A. No.

Mr. RODEN.—We object—it has all been testified to.

The COURT.—I think he may answer that question.

Q. I will ask you if there were any words said by the way of threat to any person on the “Diana” after you approached close to it?

A. No, sir; not that I heard.

Mr. SMISER.—That is all.

(Witness excused.)

Testimony of Ivar Stenso, for the Government.

IVAR STENSO, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. State your name. A. Ivar Stenso. [78]

Q. Where were you employed during May, June and July of 1919? A. Why, Admiralty Island.

Q. What company were you working for?

A. Hoonah Packing Company.

(Testimony of Ivar Stenso.)

Q. What were your duties at that point?

A. Watching traps.

Q. How many traps did the company have at that point? A. Three.

Q. What were their names?

A. There was Admiralty trap No. 1, Admiralty Bay trap, and the floating-trap No. 4.

Q. Were you there on the morning of the 8th of July, 1919? A. Yes, I was.

Q. Did you live at that point during that time?

A. Yes.

Q. Where did you sleep? A. In the cabin.

Q. Where is the cabin situated?

A. On the shore, between the Bay trap and Admiralty trap.

Q. I wish you would go to the blackboard and look at a little sketch there, and I will ask you to look at that and state whether or not it fairly represents the shore line at Admiralty Bay—state whether it does or not?

A. Yes, this seems to be—there is trap No. 1, there is the cabin, there is the Bay trap, and there is the floating-trap No. 4.

Q. I see another trap to the left of the floating-trap, what is that? A. That is Hawk Inlet.

Q. I see a straight mark drawn in front of the cabin, between the cabin and the shore line; what does that straight mark represent?

A. That is some logs and rocks that they built up in front of the shack for protection from these fellows. [79]

(Testimony of Ivar Stenso.)

Q. What was it put there for, if you know?

A. For protection from shooting at the camp.

Q. Where were you about 5 o'clock in the morning of July 8, 1919? A. I was in the cabin.

Q. What were you doing?

A. I was night watching that night, and I just got home to the cabin at that time.

Q. Had you gone to bed? A. No.

Q. I will ask you if you saw any boat come in there after that time? A. Yes, I did.

Q. Point out where the boat was when you first saw it.

A. The boat came from that direction, by the Admiralty trap, you see, and was heading this way toward the floating trap.

Q. Taking a course toward the floating-trap?

A. Yes, sir.

Q. Did it proceed as far as the floating-trap?

A. What is that?

Q. Did it go as far as the floating-trap?

A. Yes, it did.

Q. What did it do, if anything, when it reached the floating-trap?

A. It slowed down and kind of stopped.

Q. How far was it from the floating-trap when it slowed down and kind of stopped?

A. A little ways—about 20 or 30 feet, I guess—something like that.

Q. Then what did it do?

A. It waited there a little while, and then it went down to the point there.

(Testimony of Ivar Stenso.)

Q. It kept on the course there and went around the point? A. Yes, went around this direction.

Q. I will ask you what, if anything, is situated around that point, if you know?

A. I didn't see that boat when it was around there, but I heard some [80] shooting.

Q. I will ask you if you know whether there is some trap around there.

A. I have seen some trap around there, but I never been around there.

Q. What company do they belong to?

A. Some of them belong to Hawk Inlet, I guess—I never been down there.

Q. You saw the boat go around that point?

A. Yes.

Q. You say you heard some shooting around there? A. Yes.

Q. Did you see that boat any more after that?

A. Yes, I saw it a little after that—they came back.

Q. How long after you saw it disappear around the point before you saw it again?

A. Oh, about half an hour, or three-quarters of an hour—something like that.

Q. Where was it when you saw it the next time?

A. Saw it when it came outside of that point there—in that direction.

Q. There is a line there marked M-N on the blackboard. How does that correspond with the course the boat was taking when you first saw it after they came around the point?

(Testimony of Ivar Stenso.)

A. Yes, that is pretty close, I guess.

Q. Which direction did it travel after leaving the point N? A. Well, it come toward the Bay trap.

Q. I will ask you if anything occurred about that time—did you notice anything—any shooting at that time?

A. Yes, when they come up outside of the Bay trap, why, I heard some shooting.

Q. Where was the shooting done from?

A. I don't know—I was in the shack at the time so I didn't notice where they were shooting from.

Q. What did you do upon hearing the shooting?

A. When I heard the shooting I went outside there and laid down [81] behind those logs.

Q. What direction did the boat take then?

A. Well, it was slowing down when I saw it—when I left the shack—slowing down.

Q. Where was it with reference to the Bay trap when you saw it slowing down?

A. It was about here, coming this way, outside the Bay trap.

Q. How long did this shooting continue?

A. About a quarter of an hour, half an hour, or something like that.

Q. Now, which way did the boat go—did it go down as far as the Bay trap—opposite the Bay trap? A. Yes, it goes down to the Bay trap.

Q. Which way did it go then?

A. Went straight out from the Bay trap.

Q. Which way—do you see a point marked A there? Does that indicate where it went?

(Testimony of Ivar Stenso.)

A. Yes, it started out that direction.

Q. Now, where was the boat "Forrester" at that time?

A. It was laying out to the dolphin here.

Q. Where was the dolphin situated there?

A. Over to the Admiralty trap.

Q. No. 1? A. Yes.

Q. Do you know whether it was tied up or not?

A. Yes, it was tied up.

Q. Did you notice a scow there?

A. Yes, it had a scow alongside.

Q. Where was the scow with reference to the boat "Forrester"?

A. They had it alongside of the boat, on the port side.

Q. On which side of the "Forrester" was this boat that was doing the shooting, at that time?

A. The port side she was laying at that time to the boat.

Q. Laying to the port of the "Forrester"?

A. The scow was outside the boat—the scow was laying outside [82] the "Forrester."

Q. Could you tell what direction the shots were going that were coming from this boat?

A. No, I cannot.

Q. I will ask you if you heard any other shots fired about that time from any other point near there?

A. No, I couldn't say—I heard shooting, but I couldn't say where they came from.

Q. You were inside the cabin or behind those

(Testimony of Ivar Stenso.)

logs? A. Yes, behind those logs.

Q. I will ask you if you recognized that boat?

A. Yes, I seen it before.

Q. What boat was it? A. The "Diana."

Q. Could you see any men on it at the time?

A. Yes, I saw men on it.

Q. How many men did you see on it?

The COURT.—Do you mean, did you see any men or could you see any men?

Mr. SMISER.—I mean did you see any men at the time?

A. Not when the shooting was going on; no, I couldn't see any men.

Q. Were you at Admiralty Cove on July 5th?

A. Yes.

Q. I will ask you whether or not there was any boat came in there on that day?

A. Yes, there was one in the morning.

Q. About what time in the morning?

A. Around 12 or one.

Q. Where were you when the boat came in?

A. I was in short, by the floating-trap.

Q. What were you doing there?

A. I was night watching.

Q. When you saw the boat come in, what direction did it come from?

A. It came from the outside shore practically, and it was outside of the trap. [83]

Q. Outside of trap No. 1?

A. No, the floating-trap.

(Testimony of Ivar Stenso.)

Q. What did you do, if anything, when you saw the boat coming in?

A. The boat came up first close to the trap, and I fired a shot for the trap foreman.

Q. Was that a signal shot?

A. Yes; he told me to fire a shot if a boat came around.

Q. Did you fire at the boat? A. No, I did not.

Q. Just fired a signal shot? A. Yes.

Q. What happened then?

A. I heard them start in shooting after while.

Q. Where did the shooting start?

A. I don't know—I didn't pay any attention. I was on the shore there.

Q. What was doing the shooting?

A. I guess they shot from the shore and from the boat—I don't know which. I couldn't say.

Q. You couldn't say which started first?

A. No.

Q. Was there any shooting done from this boat?

A. Yes, I guess there was.

Q. Did you hear any of the shots, where they were hitting? A. No.

Q. Where did you go when this shooting began?

A. I was sitting right there.

Q. Right where?

A. On the shore, where the lead of the floating-trap goes to shore.

Q. Could you see which way the boat was traveling?

A. It was laying at the trap for a while, while

(Testimony of Ivar Stenso.)

the shotting was going on, and as soon as it was over they went straight out.

Q. You say that was about what time in the morning? A. Around one o'clock. [84]

Q. Around one o'clock on July 5th? A. Yes.

Q. I will ask you whether this boat robbed the trap at that time? A. Yes, they robbed the fish.

Mr HUBBARD.—I object to that. Let him state what the boat did.

Mr. SMISER.—I asked him if trap No. 4 was robbed at that time, where he said this boat was at that time.

The COURT.—That would not be admissible unless you can connect the "Diana" with it.

Mr. SMISER.—I think we can do that, your Honor.

The COURT.—Very well, on your promise to connect the "Diana" with it, it will be admitted.

Mr. HUBBARD.—We will object to the testimony until he does do it, your Honor.

The COURT.—It will be stricken if it is not connected. When I say the "Diana," of course I mean the defendant or the boat.

Q. About how many fish were in the trap at that time, if you know? A. No, I don't know.

Q. You don't know? A. No.

Q. Did you watch that particular trap?

A. No, I watched the Bay trap.

Q. Now, I will ask you whether you were at Admiralty Cove, at this same point, on June 29th?

A. Yes.

(Testimony of Ivar Stenso.)

Q. I will ask you whether on that occasion—at that time—any of your traps were robbed?

A. Yes, floating-trap No. 4 was robbed.

Q. What time did that occur?

A. Around 6 o'clock in the morning.

Q. Where were you at that time?

A. I was in the cabin.

Q. Had you gotten up for the morning, or had you been to bed?

A. No, I had been watching. [85]

Q. You had been watching and hadn't been to bed? A. No.

Q. Did you see the boat at that time?

A. Yes, I did.

Q. Did you recognize it?

A. Yes—it seemed to be the same boat.

Q. What boat was it? A. The "Diana."

Q. Do you know how many fish it took at that time? A. About a thousand fish.

Mr. HUBBARD.—Now, if the Court please, I think we will object to this testimony—that is, going into the question of the number of fish taken with reference to the 29th of June—that isn't in this case.

The COURT.—Of course the number of fish taken is not material.

Mr. HUBBARD.—It is only a question of the identification of the defendant or the boat on the 29th—it isn't a question of whether or not the fish were taken, or how many. That is another and different charge.

(Testimony of Ivar Stenso.)

The COURT.—If the testimony is admissible it would be admissible if only one fish were taken. The quantity of fish taken does not make any difference,—if it is connected it is admissible.

Mr. HUBBARD.—I save an exception to the testimony.

Q. Was there any shooting done at that time?

A. No, sir.

Q. By the boat or by anyone on shore?

A. No.

Q. I will ask you whether you were at Admiralty Cove about the middle of June—somewhere around the 17th of June? A. Yes, I was there.

Q. I will ask you whether or not any trap was robbed on that occasion? A. Yes, there was.

Q. What trap?

A. The Bay trap and the floating-trap No. 4.
[86]

Q. Do you know whether they had fish in them at the time? A. Yes; they had a few.

Q. Do you know how many?

A. About 200, I think, in the Bay trap.

Mr. HUBBARD.—If the Court please, we desire to save an exception to this testimony with reference to the 17th, that he is testifying to.

The COURT.—The testimony is admitted, Mr. Smiser, on your promise to connect it—if it is not connected, it will be stricken.

Mr. SMISER.—I think we will do that satisfactorily, your Honor.

The COURT.—Very well, it will be admitted,

(Testimony of Ivar Stenso.)

subject to a motion to strike later on if counsel thinks it is not connected—he may make the motion to strike it out then.

Q. About how many fish were in No. 4 at that time? A. I don't know.

Q. What boat—did you recognize the boat?

A. Yes, it seemed to be the same boat.

Q. What boat was that? A. The “Diana.”

Q. Where were you at the time the boat came up there? A. I was at the cabin.

Q. What time of the day or night was this?

A. It was about 11 o'clock in the evening.

Q. I will ask you if you were there on June 10th? A. Yes, I was.

Q. I will ask you whether any trap was robbed on that occasion? A. Yes; No. 1 was robbed.

Q. What time did that occur?

A. I don't know—it was in the night sometime.

Mr. HUBBARD.—We reserve our exceptions to this testimony, the same as the others, if the Court please—do not think it is material or competent in this case.

The COURT.—The ruling will be the same.

Q. Did you see that boat on that occasion? [87]

A. No.

Q. All you know about that particular instance is that the trap was robbed on that particular date?

A. Yes.

Mr. HUBBARD.—Now, if the Court please, we will move to strike out his testimony,—he said he didn't see the boat.

(Testimony of Ivar Stenso.)

The COURT.—The District Attorney does not have to connect it with this witness. When the Government's testimony is closed if it is not connected, then is the time to make your motion to strike it out. He does not have to connect it by this one witness—he may have some other witness to connect it by—I cannot tell.

Mr. HUBBARD.—We will keep our exception until later.

Q. Now, on June 17th, after they had robbed the trap, the boat "Diana" had robbed the trap,—

Mr. HUBBARD.—I object to that.

The COURT.—Overruled.

Q. Now, on that occasion I will ask you whether the boat as it was leaving gave any signal or anything of that sort, or made any noise?

A. Not as I heard—I was in bed.

Q. I am talking about the 17th, when you say you recognized the "Diana."

A. Yes—I didn't hear her when she left, no—I saw the boat when it came.

Q. You saw it when it came, but you didn't see it when it left—is that what I understand you to say?

A. Yes; I saw it when it came in there first.

Q. On July 8th, the time this shooting occurred, did you see the boat? A. Yes, I saw it.

Q. Did you recognize that boat? A. Yes.

Q. What boat was it? A. The "Diana."

Mr. SMISER.—Take the witness.

(Whereupon court adjourned until 2 P. M.) [88]

(Testimony of Ivar Stenso.)

AFTERNOON SESSION.

February 11, 1920, 2 P. M.

IVAR STENSO on the witness-stand.

Cross-examination.

(By Mr. RODEN.)

Q. Now, Ivar, I believe you stated this morning you were awake on the morning of the 8th, about 5 o'clock of the 8th, when you heard some shots fired—that you were in the cabin, is that correct? A. Yes.

Q. I suppose you stood at the window to see where the shots came from, did you?

A. I went outside the cabin and laid down behind the logs.

Q. You did that right away, did you?

A. Yes, as soon as I heard the shooting.

Q. Of course, you saw the boat then that was doing the firing? A. Yes, I saw the boat.

Q. Where did you say the boat was?

A. Outside the Bay trap.

Q. Which way was she heading then?

A. She was still then.

Q. She was standing still?

A. When I saw her; yes.

Q. Which direction was her bow turned?

A. Her bow was headed out.

Q. Heading out towards the Straits, or up?

A. Towards the Straits.

Q. That was the first you heard about the shooting? A. I heard it around Hawk Inlet.

(Testimony of Ivar Stenso.)

Q. What had you been doing that night?

A. I had been night watching.

Q. And you came back from your trap and went to the house? A. Yes.

Q. You hadn't gone to bed yet? [89]

A. No.

Q. All right. Now, the shotting—the first shooting that you heard distinctly took you out of the house and you went behind those logs, as you say, and then you say the boat laying out from the Bay trap—prior to this you had heard some shooting but where that shooting was you don't know?

A. No, sir.

Q. You didn't see any shots fired from the boat, did you? A. No, I did not.

Q. No, and you cannot swear now where those shots came from?

A. I don't know where they came from.

Q. When you saw the boat opposite the Bay trap she was heading out? A. Yes.

Q. About how many shots would you say were fired after you saw the boat in that position and as she was heading out?

A. Around between 20 and 30, I guess—something like that.

Q. Were there any fired from anywhere else except the boat? A. I don't know.

Q. You don't know? A. Not from the cabin.

Q. You were close to the cabin all this time?

A. Yes, sir.

Q. Now, we will go a little prior to the 8th. I

(Testimony of Ivar Stenso.)

think you testified that you saw the boat on the morning of the 5th, too, did you?

A. I saw a boat; yes.

Q. Can you swear that was the same boat?

A. No, sir; I cannot.

Q. Can you swear positively, Ivar, that you saw this same boat which you saw on the morning of the 8th at any other time,—can you swear positively to that? A. Yes.

Q. You can—all right, when was it that you are absolutely sure that you saw the same boat? [90]

A. The 29th.

Q. At what time of the day was that?

A. It was in the morning.

Q. About what time?

A. Around 6 o'clock in the morning.

Q. You had come off watch, had you?

A. No, I wasn't watching then.

Q. How did you happen to see the boat then?

A. I just got up.

Q. You got up and you saw the boat out there?

A. Yes.

Q. At which trap? A. No. 4.

Q. At trap No. 4—that is the floating-trap.

A. Floating-trap No. 4.

Q. You saw her from the cabin?

A. Yes, sir; I did.

Q. About what is the distance between the floating-trap and the cabin?

A. Around 4,000 feet, I think.

Q. About 4,000 feet? A. Yes.

(Testimony of Ivar Stenso.)

Q. Couldn't be mistaken about that, could you?

A. No.

Q. Were there any fish taken out of that trap then? A. Yes, sir, there was.

Q. Was there any shooting done at that time?

A. No.

Q. They simply took the fish and there was no shooting? A. Yes.

Q. Are those the only two occasions to which you can positively swear as far as knowing the boat or recognizing the boat is concerned? [91]

A. I saw her around the middle of June—around the 17th.

Q. You saw her again around the 17th?

A. Yes.

Q. The same boat?

A. A boat about the same length.

Q. Looked like it? A. Yes.

Q. About the same length?

A. Looked like the same boat; yes, sir.

Q. In what particular did this boat differ from other fish boats?

A. The rigging was a little different.

Q. What was the arrangement that was different from others?

A. The mast and the boom were the same height.

Q. You mean they were the same length?

A. Well, it was even on top, I mean.

Q. They were even on top? A. Yes.

Q. The mast and boom—was the boom close up to the mast—lashed to the mast?

(Testimony of Ivar Stenso.)

A. No, not close up.

Q. I do not understand what you mean by saying they were the same.

A. The boom was even with the top of the mast when it was up.

Q. The boom was even? A. Yes.

Q. Then the boom must have been pretty well drawn up to the mast, is that it? A. Yes.

Q. I will let this be the mast—this would be the boom? A. Yes, sir.

Q. The boom was pretty well up along the mast to be even on top? A. Yes.

Q. And that was the same on every occasion?

A. Yes.

Q. Haven't you ever seen the same condition on any other boat? [92]

A. No, not like it was on that.

Q. You have never seen the same on any other boat?

A. No, not the same as it was on that boat.

Q. What other differences did you notice between that boat and any other ordinary fishing boat?

A. Gray painted, black hull.

Q. I didn't quite catch you.

A. The boat was black hull, and it was gray.

Q. What other difference did you see between that boat and other boats?

A. It had a skiff on the stern.

Q. Is that the only boat you have ever seen with a skiff on the stern? A. Yes.

Q. Now, last week when you testified here you

(Testimony of Ivar Stenso.)

didn't remember anything about the condition of that boat in the way of being different from other boats, did you? A. Yes, it was the same.

Q. The only difference you could tell last week was that there were two doors to the pilot-house—did you say that last week?

A. There were two doors to the pilot-house; yes.

Q. There were two doors to the pilot-house, and that was the only difference you could find between the "Diana" and any other fishing boat—didn't you testify to that?

A. There was a window in the pilot-house; yes.

Q. How many doors were there to this pilot-house—two doors?

A. About six, I think it was.

Q. Six doors? A. Windows.

Q. Windows—I am talking about doors.

A. There was one on each side.

Q. You are positive about that, are you?

A. I am not quite sure.

Q. You are not quite sure—then why did you say there was one on each side if you don't know—you don't know how many [93] doors there were in the pilot-house, do you?

A. I never been on the inside of it—been close to it.

Q. Do you know how many doors are in the pilot-house? A. No, I don't.

Q. Now, you say you saw them on the 10th of June and on the 17th of June, is that correct?

A. Yes, I saw the boat the 17th of June.

(Testimony of Ivar Stenso.)

Q. How do you know it was the 10th of June?

A. I didn't say I saw it on the 10th—the 17th.

Q. You didn't see it on the 10th?

A. No, sir, I didn't.

Q. You saw it on the 17th—how do you know it was the 17th of June?

A. It was around the 17th.

Q. It was around the 17th? A. Yes.

Q. Might have been some other days—and you saw her on July 5th, too, didn't you?

A. I saw a boat; yes, sir.

Q. You saw a boat? A. Yes.

Q. You didn't know what boat that was?

A. No, sir.

Q. How do you know it was July 5th when you saw the boat?

A. Yes, I know that was the date.

Q. Did you make a note of it anywhere?

A. Yes, I know it was the 5th.

Q. And you saw a boat on the 29th of June?

A. Yes.

Q. How do you know it was the 29th?

A. I paid attention to it.

Q. Paid attention to it? A. Yes.

Q. But you don't know whether you saw her on the 17th or not? [94]

A. No, it was around the 17th.

Q. And the 17th is the time—or around the 17th—when the two traps were robbed, the Bay trap and the floater? A. Yes, sir.

Q. What time of day was that?

(Testimony of Ivar Stenso.)

A. It was in the evening, about 11 o'clock.

Q. You were in bed, weren't you?

A. No, I wasn't in bed.

Q. Where were you?

A. I was in the cabin.

Q. And you saw this boat come out there and rob the two traps? A. Yes, sir.

Q. And that was about the 17th?

A. Around the 17th; yes, sir.

Q. But you don't know what boat that was?

A. That was the same boat that was there after that.

Q. Now, you never knew—when did you first learn that the name of this boat that you saw at that time there was the "Diana"? A. What?

Q. When did you first learn the name of the boat? A. In Juneau.

Q. In Juneau—that was the first time—that is when you saw the boat here in town? A. Yes.

Q. You never knew before that it was the "Diana"?

A. Never was close enough to see the name of it.

Q. You never had heard anybody mention the "Diana" in connection with these robberies?

A. No.

Q. Anybody talk about the "Diana" on the 8th?

A. I don't remember.

Q. Or on the 5th? A. I don't remember. [95]

Q. Or at any other time?

(Testimony of Ivar Stenso.)

A. No, I don't remember.

Mr. RODEN.—That is all.

(Witness excused.)

Testimony of Swan Swanson, for the Government.

SWAN SWANSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. State your name. A. Swan Swanson.

Q. Where were you employed during June and July of 1919?

A. I was employed by the Hoonah Packing Company.

Q. Where were you stationed?

A. Over in Admiralty Island.

Q. When did you go there?

A. 26th of June.

Q. Were you there on the 8th of July, 1919?

A. Yes, sir.

Q. In the morning, now, I will ask you if you saw any boat come in there—in the morning?

A. Yes, sir.

Q. Where were you when you saw it?

A. I was in the cabin.

Q. Had you been to bed that night?

A. The night before—yes, I went to bed.

The COURT.—Which night?

A. The night before June 8th.

(Testimony of Swan Swanson.)

Q. You went to bed the night of July 7th?

A. Yes, sir.

Q. And you were in the cabin the next morning about 5 o'clock? [96]

A. Yes, sir.

Q. What called your attention, if anything, to the presence of the boat?

A. I heard some of the boys upon the shore talking about the boat coming around?

Q. What did you do, if anything?

A. I turned around and went over to the door and looked out, and I seen a boat there between Bay trap and No. 1.

Q. Was it moving or standing still?

A. It was moving from No. 1 towards the direction of Hawk Inlet.

Q. How far did you say it had gotten when you saw it?

A. I think it was about 1,500 or 2,000 feet from the No. 1 or "Forrester."

Q. Where was it with reference to the Bay trap?

A. It wasn't quite over to the Bay trap when I seen it.

Q. Which way did it proceed?

A. It proceeded toward Hawk Inlet.

Q. In going that direction did it go near any of the traps?

A. Yes, sir; it was also heading towards floating trap No. 4.

Q. What did it do, if anything, at No. 4?

A. They turned around, slowed down, and then

(Testimony of Swan Swanson.)

they came into No. 4 trap, and turned out and proceeded on.

Q. When you say turned around, do you mean the boat turned all the way around?

A. Yes, they took a circle and came up to the floating-trap, like it was looking into the trap or something, and turned in the same direction they were heading for before they came into the trap.

Q. Take the pointer and indicate on the black-board the direction it went and where it would be when you saw it, and about the course it took.

A. It was about here when I seen it.

Q. Show the course it took from here.

A. Took about,—come over here, then swung into this floating-trap, [97] and proceeded over here.

Q. Now, did it stop at this floating-trap when it swung in there?

A. I am not quite sure they stopped, but I know they slowed down—kind of went slowly.

Q. Then it went around to the Hawk Inlet trap?

A. Yes, sir.

Q. Is there a trap of the Hawk Inlet Company around that point?

A. There is one there, and one around this point here.

Q. Now, is that point there a named point—has it got any name to it?

A. Not that I know of.

Q. Where is Hawk Inlet with regard to that point?

A. Hawk Inlet is over there pretty near the same

(Testimony of Swan Swanson.)

direction—straight across and adjoining here somewhere.

Q. How far away?

A. I think it must be 6 or 7 miles from here, I guess.

Q. How far is this point where you say the Hawk Inlet trap is situated—how far is that from the camp down here? A. I don't know.

Q. Well, give us an estimate.

A. Must be 9,000 or more.

Q. 9,000 what? A. Feet.

Q. But Hawk Inlet itself is six or seven miles away; is that true? A. I think so.

Q. Now, after you saw the boat pass around that point where you say the Hawk Inlet trap is, did you hear anything?

A. Yes, I heard there was some shooting.

Q. Heard some shooting? A. Yes, sir.

Q. Now, did you see the boat any more after you heard that shooting?

A. Yes, sir; a few minutes after it came around here.

Q. I see a mark on the board there of a line called M-N; what does that represent? [98]

A. That is where they started firing.

Q. What does it represent with regard to where the boat was?

A. The boat was about here when it started firing, after they came around the point.

Q. Well, what direction was the boat going?

A. It was going in towards this boat here.

(Testimony of Swan Swanson.)

Q. Does that line M-N represent the direction?

A. Yes, sir, pretty fairly.

Q. Now, from N on which way did it go?

A. Kept on going this way here.

Q. Now, does it pass the floating-trap No. 4 on that course? A. Yes, sir.

Q. How near did it come to the trap at that time?

A. Why, I think it must be about a thousand feet or so.

Q. Outside of the trap? A. Yes, sir.

Q. Then which way did it go after passing floater No. 4?

A. It kept on on the same course, in this direction here.

Q. Where was the "Forrester" boat at that time?

A. The "Forrester" was laying tied up at that time at this dolphin here, where that cross is.

Q. Now, with respect to the course that the boat was on coming from M towards the Bay trap, was that in the direction of the "Forrester"?

A. Yes, sir.

Q. Now, coming in that direction what was the boat doing, if anything?

A. It was shooting—firing guns.

Q. Could you tell where the shots were landing? A. No, sir.

Q. Where were you at that time?

A. At that time when the boat was here I was up to this point here.

Q. That point is near what place?

(Testimony of Swan Swanson.)

A. Near floating-trap No. 4. [99]

Q. When had you gone there?

A. When the boat headed—when I seen the boat I took my gun and two boxes of ammunition and went down the beach there, and I called, also, Henry Alexander—he was sleeping in a tent here, about 200 yards or so away from the cabin—then I proceeded down the beach here.

Q. What is the character of the surface at that point where you say you stopped—is it smooth level surface, or is it otherwise?

A. Here is a gravel beach here.

Q. Out from where you stopped?

A. That is kind of rocks—kind of rocky formation with ragged rocks.

Q. How did you place yourself with regard to those rocks and the boat?

A. I placed myself here, down at the low water.

Q. Where did Henry Alexander go?

A. He proceeded further toward the floating-trap.

Q. Could you see him when he left you?

A. After he left me I didn't see him.

Q. What prevented you from seeing him?

A. The rocks.

Q. Did the rocks stick up? A. Yes, sir.

Q. Now, when the boat passed the floating-trap I will ask you whether it was firing at that time.

A. Yes, sir.

Q. Now, did you and Henry Alexander do anything? A. Yes, I opened fire at them here.

(Testimony of Swan Swanson.)

Q. You opened fire?

A. From this place here; yes, sir.

Q. How many shots did you fire?

A. Oh, about 12 or 13. I am not sure of it.

Q. What were you shooting at?

A. Was shooting at the boat. [100]

Q. Did Henry Alexander fire some shots?

A. I couldn't tell—I heard some shooting to the left of me.

Q. You heard some shooting to the left of you?

A. Yes; it took about the same length of time.

Q. What did this boat do when you opened fire?

A. He kept on going in the same direction and I kept on shooting.

Q. He kept going in the same direction—was that the direction of the “Forrester”?

A. Yes; came in this direction here, and when he came in about here he swung over across—

Q. Came to about the point marked A?

A. Just about.

Q. Then what did it do?

A. They turned right across Chatham Straits.

Q. Now, can you tell how far it was from the “Forrester” to the boat that was doing the shooting at the time it was nearest to it?

A. Must be about 1,500 or 2,000, or more.

Q. 2,000 what? A. Feet.

Q. Did you recognize that boat?

A. I recognized the boat later on tied to the wharf here in Juneau.

Q. When you came into Juneau you recognized

(Testimony of Swan Swanson.)

that boat? A. Yes, sir.

Q. What boat was it?

A. It was the "Diana."

Q. How did you happen to see it at the float at Juneau when you came in?

A. It was laying down here at the dock and I knew it was her.

Q. Did anybody point it out to you?

A. Yes, I believe the game warden fellow was down there—I don't know his name—officer.

Q. Well, did you recognize it yourself or did he tell you it was—

A. I recognized it as soon as I seen the boat.

Q. As soon as you saw the boat?

A. Yes, sir. [101]

Q. Without him telling you?

A. I don't think I spoke to him while we was down there because there was quite a few boys there, and I don't think I talked to him down there.

Q. I will ask you if you ever saw that same boat at Admiralty Cove at any other time?

A. I seen that same boat the 29th of June.

Q. Where was it then?

A. When I first seen it it was tied up to the floating-trap.

Q. No. 4 there? A. Yes, sir.

Q. What time was that, day or night?

A. It was 7 o'clock in the morning—about 7 o'clock.

Q. What was it doing there?

(Testimony of Swan Swanson.)

A. It was brailing the fish out of the trap—taking the fish out of the floating-trap.

Q. Did you see any men on board?

A. Yes, sir, I seen one man on board and two on the trap.

Q. Where were you at that time?

A. I was in the cabin door.

Q. Was there any shooting done on that occasion? A. No, sir.

Q. That was on June 29th? A. June 29th.

Q. I will ask you if you were there July 5th.

A. Yes, sir.

Q. Did anything happen there at the camp on that occasion?

A. Yes; between 12 and 2 o'clock in the morning two boats come—lights of two boats.

Q. Where were they when you noticed them?

A. They were coming in from this direction out here and heading in towards the beach here.

Q. Describe what—

A. I recognized it—the boat that was ahead was the patrol-boat— [102] Henry Alexander with the boat.

Q. One of those boats you saw was the patrol-boat with Henry Alexander? A. Yes, sir.

Q. Well?

A. Then there was a boat right behind him, and Alexander tied up his boat to a pile here—there is a pile here, or a dolphin that we use to tie up the small skiffs that we use to tend to the traps with—he tied up his boat to that, and I took a skiff and

(Testimony of Swan Swanson.)

pulled out to him, and we both went over here to the rocks here—a reef about here.

Q. See where there is a mark down there?

A. Yes, sir.

Q. Is that at the right place?

A. No, I think that should be a little closer here to this trap.

Q. Where the word “trap” is written?

A. Yes, sir.

Q. The Bay trap? A. Yes, sir.

Q. You went around there to a reef?

A. Yes, sir.

Q. What did the boat that you speak of do?

A. Well, when he chased the boat in there to that pile he turned around and went over to the floating-trap.

Q. This boat that you saw behind Alexander?

A. Yes, sir.

Q. What did it do further, if anything?

A. Well, it was lifting the trap, I guess.

Q. Well, do you know?

A. I know the fish was gone next morning.

Q. How long did it remain at the trap?

A. Well, they might have remained about—probably three-quarters of an hour more or less.

Q. Do you know whether there was any fish in that trap or not before the boat went there? [103]

A. There was—I didn’t see it but it was reported to me the night before.

Mr. HUBBARD.—We object to that.

Q. Never mind what was reported to you. You

(Testimony of Swan Swanson.)

say there was no fish in it the next morning?

A. No, sir.

Q. What did Henry Alexander do when you got around up there to those rocks?

A. I was shooting at that boat.

Q. What did the boat do?

A. They shot out the trap light—turned off the light of the boat and started to fire.

Q. Which way did she travel when she started to fire?

A. When they started to fire they were laying at the trap.

Q. Well, when she started then?

A. When she started she was getting closer this way towards the camp.

Q. Well, outline the course as well as you can there.

A. Must have been coming up this way here, I believe.

Q. What was she doing during that time?

A. She was keeping on shooting.

Q. Where was she shooting at?

A. I didn't know at the time, but later when I came up to the cabin all the men were up in the woods—they had been shooting at the cabin.

Q. Now, did you recognize that boat at that time?

A. No, sir, it was night and I couldn't see the name on it.

The COURT.—What time was that?

Mr. SMISER.—That was July 5th.

(Testimony of Swan Swanson.)

Q. Now, on June 29th were you at the camp,—the 29th of June? A. Yes, sir.

Q. Did anything happen there that night?

A. Yes, there was a boat, when they called me in the morning, at the floating-trap. [104]

Q. About what time?

A. About 7 o'clock in the morning.

Q. I believe you stated that you recognized that boat at that time, did you?

A. No, I recognized the boat later on, down here in Juneau.

Q. What boat was it?

A. It was the "Diana."

Q. Were you there around about the 17th of June? A. No, sir.

Q. You hadn't gotten there yet? A. No.

Q. I notice a mark there between the cabin and the shore on that drawing; what is that mark?

A. That is the fortification that was put there after the cabin was shot, for to protect the cabin and those men that was in there.

Q. Put up there to protect them from the shots?

A. Yes, sir.

Q. After what date?

A. After the 5th of July.

Q. Was it there on the 8th? A. Yes, sir.

Q. And between those dates this barricade had been built up there of rocks and logs?

A. Yes, sir.

Q. Were there any men sleeping in this cabin or in the cabin that night of July 5th?

(Testimony of Swan Swanson.)

A. Yes, there was some of the boys in there.

Q. Now, when you say that was on July 5th, what time in the night was it?

A. It was between 12 and 2 o'clock on the morning of the 5th, I guess.

Q. On the morning of the 5th?

A. Yes, sir. [105]

Q. Between 12 and 2 o'clock at night?

A. Yes, sir.

Q. On either one of these occasions you testified to seeing the boat there did you see any men on board her? A. Yes.

Q. On which occasion?

A. On the 8th of July.

Q. How many men did you see?

A. When they came back here I seen one man on the deck.

Q. Could you give a description of that man?

A. It was a tall man.

Q. How did his size compare with the defendant, Al Weathers? A. Just about his size.

Q. Did you know Al Weathers at that time?

A. No, sir.

Q. Did you hear anything said on July 5th when they were there?

A. Yes, when they were at the trap, when the night watchmen fired two shots, they hollered ashore and called them down—called them sons-of-bitches, and told them to stop shooting.

Q. Where were these watchmen stationed that were firing the shots?

(Testimony of Swan Swanson.)

A. One was on this point here and one was over on this point here.

Q. How many shots did they fire?

A. I don't think they fired more than a shot apiece.

Q. What was that for, if you know?

A. It was a signal shot.

Q. To signal what?

A. To signal me over there.

Q. To signal to you? A. Yes, sir.

Q. That you would know what happened?

A. Yes, sir.

Q. What did it give you a signal of—what did you know when you heard the signal?

A. I heard the signal and I knew fish pirates was close to the [106] trap there.

Q. Did you have an agreement to that effect?

A. Yes, sir.

Q. Then when you heard that what did you do?

A. Well, we were on the road then.

Q. You and Alexander were on the road where?

A. On the road over towards the floating-trap, and we pulled into this reef.

Q. You said, I believe, that when these signal shots were fired that they hollered—just repeat what it was that they hollered.

A. They hollered ashore and told them to stop shooting, and called them sons-of-bitches.

Mr. SMISER.—Take the witness.

(Testimony of Swan Swanson.)

Cross-examination.

(By Mr. HUBBARD.)

Q. When the shooting first started, Swan, it was more than a mile away from the "Forrester"?

Mr. SMISER.—I do not think the question is intelligible—I think he ought to define the time of which he speaks.

The COURT.—On which occasion ?

Mr. HUBBARD.—That would be the occasion of the 8th, the one we are trying here.

Q. (By Mr. HUBBARD.) You have indicated on the board there where the boat was when it started—or when the firing started, and I ask you if that was a mile or more away from the "Forrester" at that time.

A. I don't know how far it was.

Q. Well, am I right in understanding that this mark represents the point where the firing commenced? A. Yes, just about there.

Mr. HUBBARD.—As I understood the witness when he testified originally on his direct examination, he said when the boat came back from calling at Hawk Inlet the firing commenced about that [107] point, and I simply wanted to get the distance that was from the "Forrester," when the firing commenced.

Q. (By Mr. HUBBARD.) When the firing commenced at this point, how far would it be from the "Forrester," Swan?

A. This—it would be around a mile—probably more.

(Testimony of Swan Swanson.)

Q. It would be a mile at least from the "Forrester" when that firing first occurred that you heard. Now, you heard that shooting, did you?

A. Yes, sir.

Q. And at that time you had taken your position on the rocks down below? A. Yes, sir.

Q. You were in the position you went to—you had got there?

A. No, I don't think we got down there.

Q. You don't think you had reached the point yet? A. No, I don't think so.

Q. You were on your way down from the cabin to the rocks where you were to conceal yourself, or where you got behind? A. Yes, sir.

Q. You did get behind the rocks, did you, at the time? A. Yes, sir.

Q. Alexander goes on to another point?

A. Yes, sir.

Q. You couldn't see him after he left you and went on to his position, could you? A. No.

Q. But either while you were on your way down, or after you got there, you heard the firing?

A. Yes, sir.

Q. And at that time the boat was something like a mile away?

A. From the "Forrester," it would be.

Q. Yes, from the "Forrester"—that is what I am getting at. Now, after you got into your position there you commenced firing at the boat?
[108]

A. No, sir.

(Testimony of Swan Swanson.)

Q. You didn't? You didn't commence shooting at the boat?

A. I commenced after the boat come abreast of the floating-trap.

Q. When it got abreast of the floating-trap, that is when you commenced shooting?

A. Yes, sir.

Q. How far was she off the floating-trap at the time?

A. She was about a thousand feet off the floating-trap, I think.

Q. What is the length of the lead of the floater?

A. From that point it must be, I think, about a thousand feet.

Q. Isn't the lead of the floating-trap more than a thousand feet?

A. Yes, sir, she was more, but from the point where I was—

Q. I am asking you now—you said a thousand feet off the floating-trap, and you say you were about a thousand feet from the trap?

A. From the real trap—from the head.

Q. Yes, that is right—you mean the trap itself, not the lead? A. Yes, sir.

Q. You were a thousand feet from that, inside of the trap? A. Yes, sir.

Q. On the shore? A. Yes, sir.

Q. The boat you were firing at was a thousand feet outside, and you say you took two boxes of ammunition with you down there? A. Yes, sir.

Q. Did you use it all up? A. No, sir.

(Testimony of Swan Swanson.)

Q. How many shots did you say you fired?

A. Oh, about 12 or 13.

Q. At this small boat—you fired 12 or 13 shots when she was a thousand feet off the floating-trap?

A. Yes, sir.

Q. Out to sea? [109] A. Yes, sir.

Q. Why did you do that?

A. I was protecting the camp—those fish pirates were firing at the camp.

Q. You thought you were protecting the camp by firing at that boat that was a thousand feet out to sea? A. Yes, sir.

Q. 2,000 feet out to sea, but a thousand feet to the nearest trap, wasn't it? A. Just about that.

Q. And you went firing at that boat at that distance there? A. Yes, sir.

Q. And you say they were not firing at you as far as you know?

A. No, but they were firing at the camp.

Q. You thought they were firing at the camp and not at the "Forrester"? A. Yes, sir.

Q. You thought they were firing at the camp building? A. Yes, sir.

Q. As a matter of fact, they were not firing at the camp building, were they?

A. I don't know.

Q. You did know about it after it was all over, didn't you—you knew they were firing at the "Forrester"—the camp wasn't fired on on July 8th, was it? A. No, not on the 8th.

Q. So you were mistaken when you thought they

(Testimony of Swan Swanson.)

were firing at the camp, and therefore thought you would shoot back at them? A. Yes, sir.

Q. Did you see the barge and the "Forrester" that morning? A. Yes, sir.

Q. How far is the dolphin from the Admiralty trap No. 1 lead, to which the "Forrester" was tied—how many feet about? [110]

A. Probably between 700 and 1,000 feet.

Q. You mean it is 700 or a thousand feet from the lead of Admiralty trap No. 1 out to the dolphin where the boat was tied?

A. Yes, it must be about that—somewhere around there.

Q. That would make the,—what is the distance between the Admiralty trap No. 1 and the Bay trap?

A. That was somewhere around 2,400 feet, I believe.

Q. 2,400 feet? A. Or more.

Q. How much more, if it is more than that, Swan—you have been there and you know the distance pretty well, don't you? A. No, I don't

Q. You never measured it? A. No, sir.

Q. You estimate it— A. Yes, sir.

Q. As 2,400 or 2,500 feet? A. Yes.

Q. The distance was 2,400 or 2,500 feet along the shore or between the traps?

A. Between the traps, I believe.

Q. That would be straight across? A. Yes.

Q. What is the distance between the Bay trap and the floater, straight across?

(Testimony of Swan Swanson.)

A. That would be between 1,900 and 2,000 feet.

Q. You think—2,400 feet and 2,000 feet would make 4,400 feet—this boat was approximately 4,400 feet, then, according to your testimony, from the “Forrester” at the time you were shooting at her?

A. Somewhere around there.

Q. It was 4,000 feet from the “Forrester” when you commenced shooting?

A. Somewhere around there. [111]

Q. You can look at the diagram, and from your statement of distances that you put on, you say it is a thousand feet from the Admiralty trap No. 1 to the dolphin, and 2,400 feet from the Admiralty trap No. 1 to the Bay trap, and 2,000 feet between the Bay trap and the floater, so putting it at 3,000 feet is very conservative—according to your estimate the distance would be a mile or more.

Mr. SMISER.—I object to that statement—no such conclusion could be drawn from his testimony. I think counsel ought to be confined to asking questions and not to arguing the proposition.

Mr. HUBBARD.—I was asking the direct question as to the distance between the small boat and the “Forrester” at the time he commenced shooting at the boat himself.

Mr. SMISER.—I have no objection to that question.

The COURT.—I do not think that is argument. What is your best judgment as to how far it was—your best judgment.

A. I think it was around 4,000 feet, heading

(Testimony of Swan Swanson.)

towards the "Forrester" at the time.

Q. What is the length of the "Forrester"?

A. The length of the "Forrester" is—I couldn't tell—I think she is around about 70 feet—something like that.

Q. On the diagram here it indicates that the "Forrester," when she is swinging at the dolphin, swings back very close to the Bay trap—when tied to the dolphin how far would she be away from the Bay trap?

A. Probably some 1,800 feet, or something,—

Q. Maybe you do not understand me. You said it was 2,400 feet across from the one trap to the other, and I understood you to say that the dolphin was out about 800 feet from the lead of Admiralty trap No. 1? A. Yes.

Q. Now, if it was 800 feet out from the lead of Admiralty trap No. 1 to the dolphin where it was tied, you would have to [112] take that 800 feet, wouldn't you, from the 2,400 feet—that would leave you 1,600 feet?

Mr. SMISER.—He said 1,800 feet.

Mr. HUBBARD.—He got it a little more than I thought it was.

Mr. SMISER.—That is a pretty close estimate.

Mr. HUBBARD.—Yes, that is close enough.

Q. The diagram we are using here would indicate that the "Forrester" swung close to the Bay trap?

A. I don't know which way she swung at the time.

(Testimony of Swan Swanson.)

Q. You can see on the diagram, that as it is drawn there it would indicate to a person who does not understand the situation—did you draw that diagram? A. Yes, sir.

Q. You see you have the dolphin away out of proportion to the other distances—you haven't drawn it to a scale, and the jury or a stranger looking at it might think the "Forrester" extended here between the two traps.

A. I didn't draw the "Forrester" or the scow.

Q. But the "Forrester," in your judgment, was about 1,600 to 1,800 feet away from the Bay trap, is that correct? A. Yes, just about that.

Q. Now, do you remember the position she was laying in at that time? Was she just in the position they put her in there—square with the shore line—parallel?

A. I don't remember that—in fact, I didn't pay any attention to it at that time.

Q. You cannot state whether it was laying broadside to the shore, or whether she was swinging out at an angle? A. No, sir.

Mr. HUBBARD.—That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. You say at the time this boat came by floating-trap, when it was heading back in toward Hawk Inlet trap, that you and [113] Henry Alexander took a position on the reef, and that you shot at this boat. Now, I will ask you whether the boat had been shooting before you took this position and

(Testimony of Swan Swanson.)

began to shoot, or whether you opened *first* first?

A. On July 5th?

Q. Yes, on July 5th. A. I opened fire first.

Q. Before the boat fired?

A. Before the boat fired.

Q. Now, why did you open fire?

A. Well, I knew they were robbing a trap over there, and they hollered with it—they was hollering, and was calling those men down, and I knew they were robbing the traps.

Q. Now, you knew they were robbing the traps and you shot to prevent them from robbing the traps?

A. I did, to prevent them from robbing the traps.

Q. How many shots did the boat fire on that occasion after you shot at them,—how many shots did it fire on that occasion?

A. I think they must have fired pretty close to 50 shots.

Mr. SMISER.—That is all.

Recross-examination.

(By Mr. HUBBARD.)

Q. You say you were out on the point there on the 8th—out on the point as you have drawn it there? A. Yes, sir.

Q. Was the tide out?

A. It was low water, or pretty close to low water.

Q. It was low water at that time—any boat running around the floater at that time and turning

(Testimony of Swan Swanson.)

near the floater, they could not see anything about what was in the trap, could they? Do you think a person in that little boat you said came down and made kind of a little circle, then went right on off, and with low tide, could they see whether there was anything in that trap or not? [114]

A. That tide don't make any difference with a floating-trap.

Q. The tide don't make any difference with a floating-trap—it is all the same whether it is low or high tide with a floater? A. Yes, sir.

Q. She goes up and down with the tide?

A. Yes, sir.

Q. How far does that point you have put on the shore there—how far does that project out into the bay?

A. How far that point goes out into the bay?

Q. Yes. A. I don't quite get what you mean.

Q. You have given a point extending out there just this side of the lead of the floater trap?

A. Yes, sir.

Q. How far does that point extend out into the bay?

A. You mean from that place where the lead is connected to the shore?

Q. Yes—just this side of the lead.

A. I think that will be to that point, probably 600 or 700 feet.

Q. 600 or 700 feet to the floating trap?

A. Yes, I never measured it.

Q. But that is your estimate—and Henry Alex-

(Testimony of Swan Swanson.)

ander was on that point? A. Yes, sir.

Q. And he was shooting at the boat from that point?

A. I don't know what he was shooting at, but he was shooting.

Q. He went to that point, as far as you know?

A. Yes, sir.

Mr. HUBBARD.—That is all.

(Witness excused.) [115]

Testimony of Henry Alexander, for the Government.

HENRY ALEXANDER, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. What is your name? A. Henry Alexander.

Q. Where were you employed during the months of June and July, 1919?

A. I was at Admiralty Island.

Q. Were you at any time at Admiralty Cove during that time? A. Yes, sir.

Q. When did you go there?

A. I went there somewhere about the 20th of June.

Q. During July did you remain there?

A. Yes, sir.

Q. I will ask you if you were there on the morning of the 8th of July? A. Yes, sir.

(Testimony of Henry Alexander.)

Q. About 5 o'clock in the morning of July 8th where were you?

A. I went to bed at a quarter to five.

Q. What had you been doing the night previous?

A. I had been out watching.

Q. Watching what? A. A trap.

Q. You same in in the morning about a quarter to five and went to bed? A. Yes, sir.

Q. Where did you sleep?

A. Slept in a tent.

Q. Where was the tent located with reference to a cabin on the beach?

A. Why, just 300 feet from the cabin.

Q. In what direction.

A. Towards the floating-trap.

Q. About that time were you aroused by any one?
[116]

A. I don't know what time I was aroused—I was called by Mr. Swanson.

Q. What did you do when he called you?

A. I got up and went up to the floating-trap.

Q. Did you see any boat in there at that time?

A. Yes, sir.

Q. Where was the boat when you first saw it?

A. When I first saw the boat she was just off the floating-trap, passing.

Q. What direction was it going when you first saw it? A. Towards Hawk Inlet.

Q. How far from the floating-trap was she at that time?

A. Well, I should judge she was about 300 feet,

(Testimony of Henry Alexander.)

probably—something like that—I couldn't tell exactly.

Q. Did you watch the boat? A. Yes, sir.

Q. Where did it go?

A. Went around the point.

Q. What point was that?

A. Where the Hawk Inlet trap is up there.

Q. Now, there is a Hawk Inlet trap marked there on that diagram, isn't there?

A. Yes; that is this side of the point, however.

Q. That one is this side of the point. Now, point out on the map the point you say it went behind.

A. I guess it is this point here.

Q. I will ask you if there is any trap site around the point?

A. Yes, there is one but I don't know just where it is—there is one on the other side of the point.

Q. To whom does it belong?

A. I heard it belongs to—

Mr. HUBBARD.—We object to that unless he knows—if he knows it is all right.

The COURT.—If you know, answer the question.

A. I heard it belongs to the Hawk Inlet Fish Company. [117]

Q. Now, you say you saw the boat go around that point that morning? A. Yes, sir.

Q. After it went around that point did you hear anything that attracted your attention?

A. I heard some shooting.

Q. After hearing the shooting around there I will ask you if you saw the boat any more, the same

(Testimony of Henry Alexander.)

boat? A. Yes, I saw her come back.

Q. What course did she take in coming back?

A. Well, just followed the outside of the traps.

Q. Well, going in which direction?

A. Going back to Admiralty Bay.

Q. In the meantime had you changed your position from the tent and gone to any other point?

A. Yes, sir.

Q. Where had you gone?

A. I had gone just inside of the floating-trap.

Q. You notice where the map there shows the lead of the floating-trap? A. Yes, sir.

Q. Where had you gone with reference to that lead?

A. On that little point right there—I was on this side of it.

Q. Anyone go with you in that direction?

A. Mr. Swanson went with me?

Q. Where did you station yourself?

A. On that point.

Q. Which side of the point—next to the lead or on the opposite side from it?

A. No, right out on the point, in the center.

Q. Where was Mr. Swanson?

A. I don't know where Mr. Swanson was—he stopped before I got to the point.

Q. What was the character of the surface of that point—was it smooth or otherwise? [118]

A. No, it was rough.

Q. Could you see Mr. Swanson from where you were stationed? A. No, sir.

(Testimony of Henry Alexander.)

Q. After you were stationed there, which way was this boat moving that you saw, at that time?

A. It was moving towards the Admiralty Bay trap.

Q. Now, I will ask you if you heard anything—any shots fired—at that time?

A. Yes, I heard some shots.

Q. Where were they fired from?

A. Fired from this boat, on the vessel.

Q. After hearing these shots what did you do, if anything? A. I fired at the boat.

Q. How many shots did you fire at the boat?

A. Somewhere in the neighborhood of 20—25—I don't know—I didn't count them.

Q. Now, what did the boat do?

A. The boat then swung off shore.

Q. How far did it come before it swung offshore?

A. Well, just below the trap there—below the floater.

Q. Which trap?

A. The trap right above the cabin there.

Q. What do you call it?

A. I don't know what they call it.

Q. Well, look at the map there—do you know where the Bay trap is?

A. Yes, sir, it was the Bay trap.

Q. And about the Bay trap, you say, it swung off from the shore? A. Yes, sir.

Q. What was the boat doing, if anything, from the time it was coming from the floater-trap towards the Bay trap? A. It was firing.

(Testimony of Henry Alexander.)

Q. Could you tell in which direction the firing was.

A. Yes, I saw a few hit the water down there by where the "Forrester" and the scow was laying.
[119]

Q. You saw the bullets hitting the water?

A. Yes, sir.

Q. About how many shots were fired by the boat at that time?

A. I couldn't tell you that—I could guess at it.

Q. Estimate it as near as you can.

A. Somewhere near 40 or 50 shots.

Q. How far did the boat proceed, now, in the direction of the "Forrester" before it turned?

A. Well, I should judge somewhere just below the corner of the Bay trap.

Q. Was that the corner next to the "Forrester" or the one away from the "Forrester"?

A. Next to the "Forrester."

Q. Then which direction did it go?

A. Straight offshore.

Q. Did you recognize that boat? A. Yes, sir.

Q. What boat was it? A. The "Diana."

Q. Did you know the "Diana"?

A. Yes, sir; I saw her a few times.

Q. Had you seen the "Diana" at Admiralty Cove at any other time?

A. Yes, I saw her there on July 5th.

Q. On July 5th you saw it there? A. Yes.

Q. What time was that—day or night?

A. It was night.

(Testimony of Henry Alexander.)

Q. Where did you first see the boat?

A. Well, it was somewhere just off from that Bay trap—offshore there somewhere.

Q. How did you happen to see it there?

A. Well, I was out watching, patrolling.

Q. How were you going—were you on the water?

A. Yes, sir. [120]

Q. In a boat? A. Yes, sir.

Q. You were patrolling in a boat? A. Yes, sir.

Q. And just describe what you saw.

A. I just passed her.

Q. How close did you come to her?

A. Well, I would judge I was 300 or 400 feet from her.

Q. And you recognized the “Diana”? A. Yes.

Q. Which way did it go then?

A. Well, it was going up the shore towards the floating-trap.

Q. Towards the floating-trap? A. Yes, sir.

Q. Which way did you go? A. I went ashore.

Q. Where did you go ashore—at what point?

A. Right in front of the cabin.

Q. What did you do then?

A. I got Mr. Swanson.

Q. Well?

A. We went to the floating-trap, on the inside of it—at the reef.

Q. How did you go? A. In a boat.

Q. How did you go with reference to the Bay trap there? A. Pulled out around the Bay trap,

Q. You pulled out around the Bay trap and went

(Testimony of Henry Alexander.)

out on a reef? A. Yes, sir.

Q. How is that reef situated on the map there?

A. It is marked on the map just above the Bay trap.

Q. Will you tell the jury what indicates that—what mark? A. Right here.

Q. Where there is an “r” in a circle?

A. Yes, sir.

Q. You went to that reef with Mr. Swanson? [121]

A. Yes, sir; that reef is covered at high water—it was low water when we were there.

Q. Where was the boat when you reached the reef?

A. She was at the floating-trap.

Q. What was it doing?

A. I couldn't say exactly what it was doing—it was dark.

Q. I will ask you whether or not that trap was lifted? A. Yes, sir.

Q. Do you know whether there was any fish in the trap that night or not?

A. Yes, there was a few fish in it.

Q. The next morning were there any fish in it?

A. No.

Q. Now, when you took your position there on the reef what was done, if anything?

A. Well, there was some shooting occurred off the boat.

Q. How did that occur? Just go along and tell it.

A. Well, there was two watchmen stationed ashore that was supposed to give signals if anything happened.

(Testimony of Henry Alexander.)

Q. Where were they stationed?

A. Right inside of the floating-trap.

Q. The lead of the floating-trap? A. Yes, sir.

Q. On the shore? A. Yes, sir.

Q. What did they do?

A. They fired two shots from the beach.

Q. Go ahead and tell what happened.

A. For a signal; then there was some shooting off of the boat, and the boat was laying at the trap,

Q. After these signal shots were fired there was shooting from the boat laying at the floating-trap?

A. Yes, sir.

Q. Could you tell where those shots were going?

A. No, sir; I could not. [122]

Q. What did you do then?

A. We opened fire on them.

Q. How many shots did you fire?

A. I shot eight shots.

Q. How many did Mr. Swanson fire?

A. I couldn't say.

Q. Any more than you? A. I don't know.

Q. What did the boat do when you opened fire?

A. They stayed there, I guess—they were there when we went ashore.

Q. Why did you go ashore?

A. I had no more ammunition.

Q. You had no more ammunition? A. No, sir.

Q. Then you went ashore? A. Yes, sir.

Q. What did the boat do after that?

A. She continued there for a while, and then left—went straight offshore.

(Testimony of Henry Alexander.)

Q. Did she do any more shooting?

A. No, sir, not after she left.

Q. I know, but before she left did they do any shooting?

A. Yes, they shot shots after we went ashore.

Q. Do you know which way those shots went?

A. No, sir; I don't.

Q. Which way did the boat take when it left?

A. Went offshore.

Q. You say you recognized the boat as the "Diana"? A. Yes, sir.

Q. Did you hear anything said on that occasion by any one on the boat?

A. Yes, I heard some hollering.

Q. Do you know Ike Weathers' voice?

A. No, I don't know Ike Weathers very well.

Q. I mean Al Weathers? [123]

A. Yes, I heard a voice from the boat that I thought and took to be Al Weathers'.

Q. How long have you known Al Weathers?

A. I have known Al Weathers since 1915.

Q. Did you ever work where he worked?

A. Yes, I worked at the cannery where he worked.

Q. What kind of a voice has Al Weathers?

A. A very shrill, loud voice.

Q. And you heard that voice, you say, when you were on the reef? A. Yes, sir.

Q. Was that boat in there at any other time while you were there? A. No, sir.

Q. On the 29th of June were you there?

A. No, sir; I wasn't there.

(Testimony of Henry Alexander.)

Q. You went there on the 20th?

A. Yes, but I wasn't there on the 29th.

Q. You were not there on the 29th? A. No, sir.

Q. Had gone away somewhere. You were not there in June, I believe, prior to the 20th?

A. No, sir.

Q. On the 5th of July, I will ask you whether or not there were any shots fired in the direction of the cabin?

A. Well, that I couldn't say—I wasn't at the cabin.

Q. Did you find out afterwards?

A. Well, I heard some of the fellows say—

Mr. HUBBARD.—I object to his testifying to what others told him.

The COURT.—That may be stricken.

Q. Not what they said. Do you know when a barricade was built up in front of the cabin?

A. No, sir.

Mr. HUBBARD.—I think we will object to that, if the Court please—it is immaterial when they built that there.

Mr. SMISER.—He says he does not know. [124]

Q. Did you see any men on the boat "Diana" when she was in there the morning of the 8th of July?

A. No, sir.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. HUBBARD.)

Q. When did you say it was you got acquainted with Al Weathers? A. 1915, I think.

Q. What was he doing?

(Testimony of Henry Alexander.)

A. Working at the cannery.

Q. Do you remember how long he stayed there?

A. No, sir; I don't.

Q. Was he there some time?

A. That I couldn't tell you because we wasn't together all the time. I didn't work with Al Weathers. He was working in the cannery most of the time and I was working outside.

Q. Do you remember who he was working for at that time?

A. No; I don't know who he was working for—he was working in the cannery.

Q. Working in the cannery—he wasn't working for the company—he, was working for a contractor, wasn't he? A. I think so.

Q. Do you know Ike Weathers?

A. Why, I just know Ike as I see him.

Q. Was Ike working out there?

A. Ike was on one of the boats, I believe.

Q. He wasn't working at the cannery—he was on one of the boats?

A. Yes; he was on one of the boats.

Q. But the defendant here, you say, was working in the cannery? A. Yes, sir.

Q. Where was he when he did the hollering by which you learned his voice?

A. I don't know as I ever heard him holler around the cannery. [125]

Q. If you never heard him holler in 1915 how did you recognize his voice when he hollered in 1919?

A. Don't you suppose if you got out here and hol-

(Testimony of Henry Alexander.)

lered I would recognize your voice?

Q. I don't believe I would recognize yours, Henry, although you have testified so much in this case. You say you don't recall that the defendant here did any hollering at the cannery at all?

A. Not that I know of; no.

Q. But four years afterwards you heard a voice on a boat and you immediately decided it was the voice of the defendant here—is that correct?

A. I heard him two different times over there.

Q. If you didn't know the voice the first time, the fact that you heard him the second time, how would that in any way aid you in the matter?

A. Well, I think I could tell the voice if I heard it again.

Q. You have stated to the jury the only way you have now of distinguishing his voice, have you?

A. Yes, sir.

Q. You have no other way you want to give to the jury as to how you arrived at the fact that it was his voice? A. No, sir.

Q. What did you say was the first time you saw the boat some there? A. On July 5th.

Q. That was the first time you were present, on July 5th? A. Yes, sir.

Q. You were not there earlier than that?

A. I was there earlier but I never saw the boat.

Q. You never saw this boat earlier than July 5th?

A. No, sir.

Q. You commenced working there June 20th?

A. Yes, sir.

(Testimony of Henry Alexander.)

Q. You were there on June 29th, were you, at Admiralty Cove?

A. No, sir; I wasn't there on the 29th. [126]

Q. You were there July 5th? A. Yes, sir.

Q. And it was on that occasion that you say a boat came to the floating-trap, was it, or the Bay trap?

A. Floating-trap.

Q. It came to the Bay trap on July 5th?

A. No, I said the floating-trap.

Q. To the floating-trap,—and where were you at the time it came there? A. On the 5th?

Q. Yes. A. I was ashore asleep.

Q. You were ashore asleep on July 5th?

A. Yes, sir, at 5 o'clock in the morning; I went to bed about five—a quarter to five.

Q. I am asking you about July 5th.

A. Oh, July 5th?

Q. Yes.

A. July 5th I was up when the boat came—I was out on the water.

Q. It was light, was it? A. No, sir.

Q. You were out on the water, you say?

A. Yes, sir.

Q. Where had you been?

A. I had been up and down along the line of the traps.

Q. Which way did you come in?

A. Pretty near straight offshore when I came in there—I made a round up above the floating-trap, and then back down again.

Q. You were around up above the floating-trap and

(Testimony of Henry Alexander.)

then came back to the dolphin? A. Yes, sir.

Q. And then you went ashore from there, did you?

A. Yes, sir.

Q. And then who did you see, or what did you do, if anything, after that? [127]

A. I passed a boat when I was coming in.

Q. Which way was the boat headed?

A. Headed towards the floating-trap.

Q. Headed in the direction of the floating-trap?

A. Yes, sir.

Q. Did the boat run past you, or did you meet the boat?

A. No; we were pretty near running the same course.

Q. But the boat went right by you? A. Yes, sir.

Q. You had come from Admiralty trap No. 1, or that direction?

A. No, I came from straight offshore in there—I was way outside and came in.

Q. You had been a way outside? A. Yes, sir.

Q. When you saw the boat was it outside of the traps?

A. Yes, it was just outside of what we call the Bay trap.

Q. And after you saw the boat you went in and put your boat away, or did you get somebody else and then go in the same boat?

A. No, sir; I went in and got Mr. Swanson.

Q. Did you use the same boat you came in on?

A. No, sir.

Q. After you got Mr. Swanson you took a skiff and

(Testimony of Henry Alexander.)

went to some other place? A. Yes, sir.

Q. You went around to what point?

A. I went around the Bay trap to that reef you see there.

Q. Went around to where it is marked reef?

A. Yes, sir.

Q. And there you stopped? A. Yes, sir.

Q. From that point what did you see?

A. I saw a boat laying at the trap.

Q. At what trap? A. The floating-trap. [128]

Q. How far was the reef from the floating-trap?

A. That I couldn't tell you, the distance, because I never measured that distance.

Q. Is it 2,000 feet?

A. Well, sir, I don't know what the distance is—there is no use for me to estimate it when I don't know what it is.

Q. Anyway, you were on the reef? A. Yes, sir.

Q. And it was from that distance you saw the boat at the trap? A. Yes, sir.

Q. And this was what time in the morning?

A. Well, it was between one o'clock and daylight some time.

Q. It was dark then? A. Yes, sir.

Q. You could see the boat so as to distinguish it?

A. I could see the boat when it passed outside to know what it was.

Q. But the boat that was at the trap, you couldn't recognize that?

A. Yes, sir, because I saw her go straight there.

Q. You kept watch on her? A. Yes, sir.

(Testimony of Henry Alexander.)

Q. While you were in getting Mr. Swanson and all, you still had your eye on the boat, did you?

A. The boat was at the trap before I got in there.

Q. You waited until she got to the trap before you started out? A. Yes, sir.

Q. And you could see all the time? A. Yes, sir.

Q. From where you were to the trap was something like half a mile, wasn't it?

A. I don't know what the distance was.

Q. I will ask you where you were when you got Mr. Swanson?

A. I was at the cabin—I had just pulled ashore.

Q. You saw this boat over at the floater from the cabin? A. Yes, sir. [129]

Q. What did you see—anything but the lights?

A. I saw the lights, yes.

Q. Anything else? A. No.

Q. You couldn't see anything else except the lights?

A. No.

Q. Are you certain you were not looking at trap lights?

A. No, sir; I wasn't looking at trap lights—I know a trap light from a boat.

Q. Then you took a boat, you and Mr. Swanson, and went around to the reef, and from there you say you did some shooting at the boat? A. Yes, sir.

Q. But the boat that was there hadn't fired any shots at you?

A. Yes, sir; they fired shots before ever I reached the reef.

Q. The first shooting, as I understand, was what

(Testimony of Henry Alexander.)

you call signal shots? A. Yes, sir, from the shore.

Q. Who fired the signal shot?

A. Mr. Stenso was one of them.

Q. You think he fired the signal shots?

A. Yes, he was one of them—the other man I don't know.

Q. After the signal shots were fired, then you say there was some shooting from the trap where—

A. From the boat that was at the trap.

Q. Where was the shooting from the boat—at what point? A. I don't know where they were.

Q. You don't know where they fired or what they fired at? A. No, sir.

Q. You heard the shooting? A. I did; yes, sir.

Q. Going to the 8th, did I understand you to say you fired about 25 shots at the small boat?

A. Yes, sir. [130]

Q. How large was that boat?

A. Well, I should judge it was somewhere in the neighborhood of 40 or 45 feet.

Q. Well, are you pretty well satisfied she was about a 45 foot boat?

A. No, sir, I couldn't tell you.

Q. I would like you to tell us what size boat it was you were firing at.

A. I am just guessing at that—I never measured the boat.

Q. You have seen the boat, haven't you, often?

A. Yes, sir, that is all, but I couldn't tell the exact length of it.

Q. How many shots did you say you fired at that

(Testimony of Henry Alexander.)

boat? A. Somewhere about 25.

Q. Didn't you shoot more than that, Henry?

A. No.

Q. About 25, you say? A. Somewhere about 25.

Q. And you were shooting from a point just inside the floater? A. Yes.

Q. How high were you above the water there?

A. Somewhere about 25—maybe a little higher.

Q. Wasn't it more than that?

A. No, I don't think so—somewhere about 25 feet from the water mark.

Q. That was the point,—had you made any preparations for defense at that point? A. No, sir.

Q. Just walked up there on the rock where you had a good view? A. No, sir.

Q. And where you commenced your firing?

A. Yes, sir.

Q. Was there any timber there—any trees or anything? A. There was a few trees there, yes.

Q. Were you in front of them? [131]

A. No, sir.

Q. Which side of the reef were you on?

A. I was right out on the beach line.

Q. And it was from that point that you fired at the boat? A. Yes, sir.

Q. Could you see Mr. Swanson—where he was?

A. No, sir; I left Mr. Swanson before I got to the point.

Q. The boat turned out to sea after the shooting had taken place—the boat turned out to sea at a place marked A on that diagram, is that right?

(Testimony of Henry Alexander.)

A. Yes, it was somewhere about there.

Q. Went straight out to sea? A. Yes, sir.

Q. Where you were you could distinctly see that?

A. Yes, sir.

Q. You were higher up than the water—25 feet?

A. Yes, sir.

Q. You could see distinctly that the boat at the point A off the Bay trap—

A. I couldn't tell you if it was right at the point—it was somewhere near that place.

Q. She turned and went straight out to sea?

A. Yes, sir.

Q. That was on the 8th of the month. You notice on the diagram, Henry, there is a little "c" right off the floater trap? A. Off the floater?

Q. Yes. A. Well, yes.

Q. When you testified in the case here before didn't you fix the point at that point where she turned out to sea?

A. No, sir, that is where the boat was when I first fired at her.

Q. That is where the boat was when you first fired at her?

A. Yes, sir; I never stated that the boat turned off shore there.

Q. The floater? [132]

A. No, sir.

Q. At the time you were shooting at her did you know that any shots had been fired at the "Forrester"? A. Yes, sir.

Q. How did you know it?

(Testimony of Henry Alexander.)

A. Because I heard it from the boat—I heard the reports.

Q. You could hear the shooting out on the boat?

A. Yes, sir.

Q. Therefore you knew the shots were being fired at the “Forrester,” is that it? A. Yes, sir.

Q. At that time the boat was three or four thousand feet away from the “Forrester”?

A. Well, I don’t know what the distance is—I never measured it.

Q. And the boat was at least 2,000 feet away from you? A. That I couldn’t tell you.

Mr. HUBBARD.—That is all.

(Witness excused.)

Testimony of Andrew Abrahamson, for the Government.

ANDREW ABRAHAMSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

—Direct Examination.

(By Mr. SMISER.)

Q. Please state your name.

A. Andrew Abrahamson.

Q. Where were you working during June and July, 1919? A. Admiralty Island.

Q. What company were you employed by?

A. Hoonah Packing Company.

Q. What was your business?

A. Trap watchman. [133]

(Testimony of Andrew Abrahamson.)

Q. What trap did you watch? A. No. 1 trap.

Q. Admiralty No. 1? A. Yes.

Q. Were you there on the morning of July 8, 1919?

A. Yes, sir.

Q. Where were you about 5 o'clock in the morning?

A. I was at the shack on the beach.

Q. What were you doing? A. I was in bed.

Q. Do you know whether any boat came in there about that time? A. Yes, there was.

Q. Did you receive any information to that effect—did you learn it at that time?

A. The watchman called me.

Q. What did you do when he called you?

A. I got up.

Q. Did you look out? A. Yes, sir.

Q. Where was the boat when you first looked out?

A. It was right about opposite No. 1 trap.

Q. What course was it taking?

A. Heading towards Hawk Inlet.

Q. In going in that direction did it pass any of the traps of the Hoonah Packing Company?

A. Yes, it passed two of them.

Q. Which ones did it pass?

A. Passed trap No. 1 and floating-trap No. 4.

Q. Which one did it pass nearer to?

A. The floating-trap.

Q. In passing the floating-trap I will ask you if you saw it make any change in the way it was traveling? A. Yes, it slowed down some.

Q. How close did it come to the floater? [134]

A. I couldn't say exactly—from 50 to 100 feet.

(Testimony of Andrew Abrahamson.)

Q. Then what did it do?

A. It went over to Hawk Inlet.

Q. Look up at the map there—do you see a point out to the far left of the map? A. Yes.

Q. Is that the point you refer to?

A. Yes; they run around that point, and there is an inlet in there—a little bight.

Q. Is there a trap in there?

A. Yes, I think there are two traps.

Q. Whose traps? A. Hawk Inlet traps.

Q. Now, after the boat had passed around that point could you see it?

A. No, I couldn't see it when it was in the inlet.

Q. Did you hear anything about that time?

A. I heard some shots fired.

Q. After you heard those shots fired did you see that boat any more?

A. Yes, I seen it once coming out from the inlet—then it went back in again.

Q. Now, when it came around that point what course did it take?

A. When it came back it was heading towards floating-trap No. 4.

Q. How close did it come to floating-trap No. 4 at that time?

A. When I first seen it it was about a thousand feet from floating-trap.

Q. What did they do at that time?

A. They started firing from the boat.

Q. Could you tell what direction they were firing?

A. No, not exactly what direction.

(Testimony of Andrew Abrahamson.)

Q. Where were you? A. I was at the shack.

Q. Well, from the time you saw it firing which way was the boat going? [135]

A. Heading towards the floating-trap.

Q. What did you do at that time?

A. Went out and got behind some logs that were built up in front of the cabin.

Q. Did you notice which way the boat went on its course at that time?

A. Yes, it was heading down towards the floating-trap—past the floating-trap and on down towards the Bay trap.

Q. How far in that direction did it come?

A. About right out from the Bay trap.

Q. Then what did it do? A. Struck out.

Q. What was the boat doing at the time it was coming from the floating-trap to the Bay trap?

A. Firing shots.

Q. About how many shots were fired?

A. About 40 or 50 shots, I guess—they were firing from shore too, I heard afterwards.

Q. Now, where were those shots being fired?

A. Right in between the floating-trap and the Bay trap.

Q. Do you know who was down there? A. Yes.

Q. Who? A. Swan and Henry Alexander.

Q. After this boat came down to opposite the Bay trap where did it go?

A. It went over across to Whitestone Harbor.

Q. Is that out across the bay? A. Yes.

Q. Where was the "Forrester" lying at that time?

(Testimony of Andrew Abrahamson.)

A. It was laying to a dolphin down by No. 1 trap—close to No. 1.

Q. How was that position in regard to the course that the boat was coming from floating-trap to the Bay trap—was it on the same course?

A. I don't understand. [136]

Q. Was it on the same course that the boat took when it come from the floater towards the Bay trap—was this “Forrester” in that same direction?

A. No, not exactly.

Q. Well, near to it?

A. The “Forrester” was laying kind of in the bay.

Q. In a general way is the map there correct?

A. Yes.

Q. That shows the position of the boat and the two traps? A. Yes.

Q. Then when the boat was at the floating-trap and came towards the Bay trap would it be nearer the “Forrester” than it had been to the floater?

A. Yes, it would be nearer to the “Forrester.”

Q. Did you see where any of these bullets were striking? A. No, I did not.

Q. At that time where were you?

A. At the back—behind the fortification we had there.

Q. Do you know when that fortification was built up there?

Mr. HUBBARD.—I think we will object to that, if the Court please.

The COURT.—I do not see how it helps or hurts—what difference does it make when it was built?

(Testimony of Andrew Abrahamson.)

Mr. SMISER.—All right; just one of the occurrences that took place that I would like to prove about the surroundings there, to be weighed by the jury.

The COURT.—Yes, but it might have been built two days before this occurrence, or it might have been built one day before—it would not be evidence one way or the other—it would not prove anything.

Q. After the boat left did you go over to the “Forrester”?

A. No, I didn’t.

Q. You didn’t examine the “Forrester”?

A. No.

Q. I will ask you if you were at that same point on the 5th of [137] July?

A. Yes, sir.

Q. I will ask you whether any boat came there on the 5th of July?

A. Yes, there was.

Q. Before I leave that point, I will ask you if you recognized the boat on the 8th that I was asking you about?

A. Yes, I did.

Q. What boat was it?

A. The “Diana.”

Q. Now, I will ask you if there was a boat there on the 5th of July?

A. Yes, sir.

Q. What time was it?

A. About one o’clock at night, I should judge—between twelve and one.

Q. Where did it go to—to what point did it go that time?

A. Went down towards the floating-trap.

Q. Do you know whether the floating-trap was lifted at that time or not?

A. Yes, it was lifted.

(Testimony of Andrew Abrahamson.)

Q. It was lifted? A. Yes, it was.

Q. Where was the boat when you saw it on that occasion, on the 5th?

A. Henry Alexander was the foreman and he came in and woke us up, and we all got up and looked out of the door, and at that time the boat was heading down towards the direction of the floating-trap, and it was dark, at night, so we couldn't exactly see the boat plain.

Q. Well, what happened after that?

A. After Henry woke us up in the shack, Henry and Swanson took a skiff and rowed out towards the Bay trap, and there was some shots fired, and then after that we stood in the cabin door and heard a bullet come passing right by the shack, and we ducked out—went out the other door—we had a door on the other [138] side of the cabin, and went up in the woods.

Q. Who was with you?

A. Herman Mitts and Ivar Stenso.

Q. What did you go up in the woods for?

A. We got scared.

Q. What purpose did you go up there for?

A. To hide.

Q. What did you do when you went up there?

A. Well, hid behind some big trees.

Q. How many shots did you hear fired?

A. 30 or 40 shots.

Q. After you left the cabin did you hear any bullets? A. Yes, I heard bullets in the woods.

Q. How far did the boat come from the direction

(Testimony of Andrew Abrahamson.)

of the floater in the direction of the cabin at that time?

A. It was pretty dark at night, and I couldn't exactly say.

Q. Could you give some idea with reference to the Bay trap how far they came in that direction?

A. During all of the shooting it was laying at the Bay trap.

Q. When it was doing this shooting, I understand you to say, it was coming towards the Bay trap—did you state that?

A. No, the floating-trap—it passed back of the Bay trap and went up to the floating-trap.

Q. It passed by the Bay trap and went up to the floating-trap, and robbed the floating-trap, as I understand? A. Yes.

Q. And then the shooting occurred? A. Yes.

Q. And which way was it going at the time the shooting was going on, if you know?

A. It was laying at the floating-trap.

Q. Then when they left which way did it go?

A. Come right by the Bay trap again, and we were up in the woods at that time so I couldn't see which direction it went from there. [139]

Q. Could you distinguish the boat at that time?

A. No, I couldn't.

Q. You couldn't? A. No.

Q. I will ask you if you were there at that same point on the 29th day of June, 1919?

A. Yes, sir.

Q. I will ask you whether any boat came there at

(Testimony of Andrew Abrahamson.)

that time? A. This boat did.

Q. What time did it come there?

A. Around about 7 o'clock in the morning.

Q. Where were you at that time?

A. In the shack.

Q. Were you informed of the presence of the boat being there—anybody tell you about it?

A. No, I went outside and I seen the boat.

Q. How did you happen to go outside?

A. The cook, I believe, called us for breakfast and we were going to get up for breakfast.

Q. You went outside and saw the boat?

A. Yes, sir.

Q. About what time in the morning?

A. About 7 o'clock.

Q. Where was the boat when you first saw it on that occasion?

A. It was a little past the shack—between the shack and the Bay trap.

Q. Between the shack and the Bay trap?

A. Yes.

Q. Which way was it heading?

A. Up to the floating-trap.

Q. Where did it go?

A. It went right into the floating-trap.

Q. What did it do there?

A. Started to lift. [140]

Q. Started to lift it—did it do it? A. Yes, sir.

Q. Did you see them lifting it? A. I did.

Q. How many men were on it? A. Three men.

Q. Could you describe the appearance of those

(Testimony of Andrew Abrahamson.)

men? A. No, not exactly at that time.

Q. Could you tell whether they were the same size or not? A. No, they wasn't the same size.

Q. In what way did they differ in size?

A. There was two small fellows, and one tall fellow.

Q. How about the larger man's size—how did that compare with the defendant, Al Weathers, here, in size?

A. Well, I couldn't say exactly—it was about 4,000 feet up to that.

Q. It was too far for you to see? A. Yes.

Q. After lifting the trap what did the boat do?

A. They lifted the trap and went away.

Q. Do you know whether that trap had fish in it at the time or not?

A. The watchman said it had—I never seen the fish.

Mr. HUBBARD.—We object, now.

Mr. SMISER.—I don't want what the watchman said unless you know it yourself.

Q. Was there any shooting done on that occasion?

A. No, sir.

Q. Did you recognize that boat on that occasion you have just testified to, the 29th?

A. Yes, sir, I did.

Q. What boat was it? A. The "Diana."

Q. Were you at this point, Admiralty Cove, about the middle of June—around the 17th?

A. Yes, I was. [141]

Q. I will ask you whether you saw a boat come in there at that time? A. Yes, sir.

(Testimony of Andrew Abrahamson.)

Q. What time was that?

A. Between 11 and 12, I should think, at night.

Q. 11 and 12 o'clock at night,—where was the boat when you first saw it?

A. About 50 feet out from the No. 1 trap.

Q. Where were you? A. I was at the shack.

Q. You were at the shack? A. Yes, sir.

Q. What did you do when you saw the boat in that position?

A. When I first seen them they were coming into the trap, and they landed at No. 1 trap, and I followed from the beach and told them to get away from there and they said something, but I couldn't exactly hear what it was; and I took a skiff and rowed out, and when I got out about 50 feet, I should judge. from the boat, two fellows was up on the capping and one on the boat, and I heard one fellow on the boat say, "Let her go," and they let go of the trap and went out a little ways, and they come up on deck and told me to beat it inshore or they would knock my block off.

Q. What did you do then?

A. I took the skiff and rowed ashore.

Q. You took their advice? A. Yes, sir.

Q. What did the boat proceed to do?

A. It went down to the floating-trap.

Q. What did it do down there?

A. It lifted the floating-trap, and when it got through with the floating-trap it came back and lifted the Bay trap.

Q. I will ask you if you recognized that boat?

(Testimony of Andrew Abrahamson.)

A. I did. [142]

Q. What boat was it?

A. Not that night I didn't recognize the boat—it was between 11 and 12 and I didn't see the name on it.

Q. Did you know Al Weathers at that time?

A. No, I did not.

Q. Have you got acquainted with him since, by sight? A. Yes, by sight—I seen him here.

Q. Are you able to say whether that was him or not on that occasion?

A. I didn't see the man's face—I wouldn't say it was him, but the size of the man was pretty much like him.

Q. How about the size of the other two men in comparison with the size of Ike Weathers and Ernest Stage? A. Pretty much like them.

Q. You have seen them here? A. Yes, I have.

Q. I will ask you if you were at Admiralty Cove on June 10th? A. I was not.

Q. You were not there June 10th? A. No.

Q. What time did you go there?

A. Around the 14th, I think.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. RODEN.)

Q. Now, on the morning of the 8th, you say the watchman came up into the cabin there and woke you up? A. Yes, sir.

Q. And you put on your clothes and went outside and took a look? A. Yes, sir.

(Testimony of Andrew Abrahamson.)

Q. And you found the boat opposite No. 1 trap—is that correct? A. No, I didn't.

Q. Where did you find it?

A. When I first seen the boat it was about 50 feet out from [143] No. 1—maybe a little past No. 1—I cannot remember exactly the distance.

Q. So I am right, after all—so you saw it opposite No. 1 trap? A. Yes.

Q. About 50 feet from No. 1 trap? A. Yes.

Q. And she was heading what direction?

A. Towards the floating-trap No. 4.

Q. Wasn't she heading in the direction of the Bay trap? A. She passed that Bay trap.

Q. And she was also heading in the direction of the Hawk Inlet trap, wasn't she? A. Yes.

Q. All right. Which trap is sticking out the farthest into the water, the Bay trap or the floater?

A. The floater.

Q. And which one is farthest out, the floater or the Hawk Inlet? A. The floater, I should judge.

Q. The floater sticks out farther than any of the other traps? A. I think it does, yes.

Q. And you estimate she came within 100 or 150 feet of the floater as she passed on down?

A. About 50 or 100 feet.

Q. And where did the boat go then?

A. Went down to Hawk Inlet.

Q. What did you do while she was gone?

A. Stood in the cabin door and looked at it.

Q. And when she showed up again you went behind the breastworks, did you? A. Yes, sir.

(Testimony of Andrew Abrahamson.)

Q. And remained there until when?

A. Remained there until she left.

Q. Where was she when she pulled out from there, the time you saw her last? [144]

A. Right about opposite the Bay trap.

Q. How far out was she from the Bay trap?

A. Oh, a couple of hundred feet, probably, when I seen her last—she kept on going across to White-stone Harbor.

Q. You took a little peep from the breastworks, I suppose, once in a while? A. I did.

Q. That is how you saw her when she was about 100 feet from the Bay trap? A. Yes.

Q. Now, on July 5th it was about 2 o'clock in the morning? A. About 12 o'clock, I guess.

Q. And you were in bed at that time, too?

A. Yes, sir.

Q. And it was Henry Alexander that came and woke you up? A. Yes, sir.

Q. Then you put on your clothes again, and you went out, and after you came out you saw this boat pulling up towards the floater?

A. Not on the 5th.

Q. Where did you see her after you got up on the 5th?

A. I seen her between the Bay trap and the shack, but I didn't put on my clothes.

Q. You saw her between the Bay trap and the shack? A. Yes, sir.

Q. That was on the 5th? A. Yes, sir.

Q. And before you had put on your clothes?

(Testimony of Andrew Abrahamson.)

A. Yes, sir.

Q. And that was after Henry Alexander had called you? A. Yes, sir.

Q. Between the Bay trap and the shack?

A. Yes, sir.

Q. She had not passed the Bay trap, had she?

A. No, she had not passed the Bay trap. [145]

Q. You don't know whether she took any fish out of that trap or not, do you, when she pulled up to the Bay trap? A. No, I didn't see the fish.

Q. And it was, I believe you said, on the 29th when you saw her again? A. Yes, sir.

Q. It was in the morning—and again you saw her on the 17th? A. Yes, sir.

Q. How close did you get to her on the 17th?

A. About 50 feet of her.

Q. She was then tied up to which trap?

A. No. 1.

Q. Did she have any lights on?

A. No, no lights.

Q. The boat was dark? A. Yes, sir.

Q. Was the trap light burning?

A. Yes, it was.

Q. One or two lights burning on the trap?

A. One light.

Q. Could you see the boat distinctly at that time?

A. Yes, I could see the boat.

Q. In what position were you with relation to the boat? A. I was on the stern of the boat.

Q. On the stern, and within 50 feet?

A. Yes, sir.

(Testimony of Andrew Abrahamson.)

Q. You had no lights on your boat, I suppose?

A. No, I didn't.

Q. What kind of boat did you have—a skiff or an engine boat? A. Had a skiff.

Q. You couldn't see any name on the boat at that time, could you? A. No, I couldn't.

Q. Couldn't make out the name of the boat?

A. No, sir. [146]

Q. But you could see the men on the boat?

A. Yes, sir.

Q. And one of them was a tall man?

A. Yes, sir.

Q. And the other one wasn't so tall?

A. No.

Q. And the other one was still a little less tall?

A. Yes, sir.

Q. When did you know for the first time that this boat was the "Diana"?

A. I seen her here, down to the float, when we come into Juneau.

Q. How did you happen to see her that time?

A. Why, all of us, we come in and we took a walk down to the city dock.

Q. Who took you down there?

A. There was, I think it was the game warden—a fellow from the courthouse.

Q. Do you remember the game warden's name?

A. No, I don't.

Q. Would you recollect his name if I mentioned it—was it Lund? A. I don't remember.

Mr. RODEN.—That is all.

(Testimony of Andrew Abrahamson.)

Redirect Examination.

(By Mr. SMISER.)

Q. I will ask you whether or not you identified the boat yourself, or whether anyone suggested to you anything about which boat it was?

A. I identified the boat when I seen it.

Q. Did the game warden point it out to you?

A. No, not exactly.

Mr. SMISER.—That is all.

Q. (By Mr. RODEN.) But the game warden took you all in tow and took you down to the boat, didn't he? [147]

A. Yes, we all went down together.

Q. (By Mr. SMISER.) Were there any other boats there? A. The "Diana" was there.

Q. (By Mr. SMISER.) I say, were there any other boats except that?

A. Yes, lots of other boats.

Mr. SMISER.—That is all.

(Witness excused.)

(Whereupon court adjourned until 10 o'clock tomorrow morning.)

MORNING SESSION.

February 13, 1919, 10 A. M.

Testimony of Herman Mitts, for the Government.

HERMAN MITTS, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of Herman Mitts.)

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name. A. Herman Mitts.

Q. Where were you working all during the months of June and July, 1919?

A. Well, I was working around the cannery for the Hoonah Packing Company in June, and the first of July I went out to Admiralty Cove there watching trap.

Q. What time did you go out to Admiralty Cove?

A. I got there the first day of July.

Q. Were you there on the morning of the 8th of July? A. Yes, sir.

Q. Where were you about 5 o'clock?

A. I was in the cabin.

Q. Were you in bed or up?

A. Well, I woke up between 4 and 5 o'clock in the morning—something like that.

Q. Did you see a boat come in there that morning? [148]

A. Yes, I saw a boat come around the point from Funtier Bay there.

Q. Come around the point and go to Funtier Bay—where is that with reference to Admiralty trap No. 1—in that direction?

A. Yes; this boat come by No. 1 trap.

Q. What way was it headed?

A. Towards Hawk Inlet.

Q. *When* general route did not go from near Admiralty trap No. 1 toward Hawk Inlet trap?

A. Well, it went by the trap—by the No. 1 trap,

(Testimony of Herman Mitts.)

and then the Bay trap, and floating-trap, and when it got up to the floating-trap it kind of slowed up a little bit, it looked to me.

Q. Then where did it go?

A. Then kept on going until it got behind the point there where Hawk Inlet got a trap.

Q. Got behind the point where the Hawk Inlet has a trap? A. Yes.

Q. Could you see it after it passed around the point?

A. Well, no; not after it got around the point there—it kind of turned—it got out of sight.

Q. After it got around that point did you hear anything that attracted your attention?

A. I heard some shooting.

Q. After you heard the shooting around that point did you see the boat any more?

A. Well, after they quit shooting, I sat down and put my clothes on, and a little while after I heard some shooting again and I went and looked out of the door and I saw this same boat coming back.

Q. Where was it with reference to the floater-trap No. 4 at the time you saw it the second time?

A. When I got out I judge it was about a thousand feet or so from the floating-trap.

Q. About a thousand feet in what direction from the floater—that is, was it on the side next to you, beyond you out in [149] the water, or where was it?

(Testimony of Herman Mitts.)

A. Well, it wasn't on my side—more like on the other side.

Q. Go around to the board and look at that little map and show us about where the boat was when you first saw it after it came back around the point—you understand that map, do you?

A. Yes—this is the floating-trap?

Q. That is floating-trap No. 4.

A. Here is the cabin?

Q. Yes.

A. Well, it was something about there when I saw it.

Q. Stand back—it was somewhere about there?

A. Yes.

Q. About a thousand feet in that direction off the floater? A. Yes.

Q. Which way did it travel after that?

A. Well, it come out something like this until it got out to,—this is the Bay trap—it got up to here somewheres, then kind of turned out towards sea.

Q. It came in the direction of the Bay trap?

A. Yes, something.

Q. Something in the direction of the Bay trap?

A. Yes.

Q. And then turned out to sea. Now, from the time you saw it there near the floater-trap did anything happen—did you hear anything happen?

A. They were shooting.

Q. Could you tell what direction they were shooting?

A. No, I couldn't tell—I was behind some rocks

(Testimony of Herman Mitts.)

and logs we had piled up there.

Q. In front of the cabin?

A. Yes, in front of the cabin.

Q. Where was the "Forrester" laying at that time?

A. The "Forrester" was tied up to a dolphin close to trap No. 1.

Q. Did you look at the "Forrester" to see,—at that time could you [150] tell where the shots were going?

A. No, I couldn't tell where the shots were going.

Q. About how many shots do you think you heard at that time?

A. Oh, I judge between 40 and 60 shots—I couldn't say which would be nearer, 40 or 60.

Q. I will ask you whether or not you recognized the boat at that time.

A. Well, that was the first time I remember seeing that boat.

Q. It was the first time you had seen that boat?

A. And I was too far away to see the name on it.

Q. Did you see that boat after that anywhere?

A. Well, I don't know—I saw a boat in Juneau that looks like it, but I couldn't say if it was the same boat. I wouldn't swear to it.

Q. What boat was that? A. The "Diana."

Q. Where did you see it? A. The City float.

Q. I will ask you if you were at Admiralty Cove on the 5th of July, 1919? A. Yes, I was there.

Q. I will ask you if anything happened there that night, unusual?

(Testimony of Herman Mitts.)

A. Well, yes; about one o'clock a boat was over there, and I don't know whether it was tied up to the floating-trap—it was dark and I couldn't see, but they were close by the floating-trap anyway.

Q. There was a boat near the floating-trap?

A. There was quite a number of shots fired.

Q. Where were you at that time?

A. I was in the cabin.

Q. Who else was in the cabin, if anybody—how many men?

A. There was five of us, I think—five or six.

Q. Could you tell where the shots were lighting at that time?

A. Well, I heard a few bullets over the cabin.
[151]

Q. What did you and the other men in the cabin do at that time?

A. We went out behind the shack and got behind some trees.

Q. Did you hear any bullets out there after you went out of the cabin?

A. Yes, I heard, I suppose it was bullets—I heard limbs cracking a couple or three times, and I had an idea it was from the bullets.

Q. How long did the boat remain at floater-trap No. 4 at that time?

A. Oh, I judge 30 or 40 minutes, something like that.

Q. When it left there, which way did it go?

A. It went towards Hawk Inlet.

Q. Was it light enough for you to see the boat

(Testimony of Herman Mitts.)

at that time? A. No.

Q. It wasn't? A. I couldn't see no boat.

Q. You were not at this camp on the 29th of June? A. No, sir.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. RODEN.)

Q. You say you got up about 5 o'clock on the 8th?

A. Yes, between 4 and 5, sometime.

Q. How did you happen to get up that early in the morning?

A. The night watchman come and called, "Swan Swanson"—that is what woke me up.

Q. Who was the night watchman?

A. His name was Benson.

Q. He called you and you got up?

A. He called "Swanson" and that woke me up, too—I heard him.

Q. You got up, anyhow? A. Yes.

Q. And put on your clothes?

A. Well, no, not exactly right away. [152]

Q. What did you do?

A. I went out and looked—I heard them say something about the boat was coming down.

Q. So you went out and looked?

A. I looked out through the door.

Q. Where did you see the boat when you went out and looked?

A. It was just coming around the No. 1 trap—it wasn't quite around the trap yet when I seen it.

(Testimony of Herman Mitts.)

Q. It wasn't around the trap yet? A. No.

Q. And you watched her go towards Hawk Inlet?

A. I didn't get you.

Q. I say, you watched the boat then going down towards Hawk Inlet? A. Yes.

Q. How far off the traps was she then, about?

A. Well, the Bay trap—I guess she must have been, oh, 500 or 600 feet out from the Bay trap, anyhow.

Q. 500 or 600 feet out from the Bay trap, and she was headed for the point there to go around to Hawk Inlet, was she?

A. She went pretty close to the floating-trap.

Q. The lead to the floating-trap sticks out pretty well, doesn't it?

A. It sticks out a little further than the Bay trap.

Q. So to get to the point she would necessarily have to come closer to the floating-trap than the other trap, wouldn't she?

A. Well, it wasn't exactly necessary to go that close.

Q. Just answer the question. If she kept on a straight course from where you saw her heading for the point she would necessarily come closer to the floating-trap than to any of the other traps, wouldn't she? A. Yes, she would.

Q. That is the time you heard the shooting?

A. No, not before she got to the point at Hawk Inlet.

Q. When she got around the point at Hawk Inlet

(Testimony of Herman Mitts.)

you heard the shooting? A. Yes. [153]

Q. Then you noticed her coming back again?

A. Yes.

Q. Where was she when you saw her coming back?

A. When I saw her again—when I got out and looked she was, as I said, about a thousand feet from the floating-trap.

Q. That is when you saw her coming back again?

A. Yes, the first time.

Q. Did you see her coming back from that direction the second time? A. The second time?

Q. Yes.

A. No, that was the first time that I saw her.

Q. You say when you saw her coming back the first time it was then within a thousand feet of the floating-trap—how close was she to the floating-trap when you saw her come back the second time?

A. I didn't see her the second time.

Q. Then she was one thousand feet off the floating-trap when you saw her come back?

A. Just about.

Q. That is the first time you noticed her coming back? A. Yes.

Q. How much time elapsed between the time you saw her first visit the Bay trap to the time you saw her coming back, opposite the floating-trap?

A. Well, she must be away 30 or 40 minutes, something like that.

(Testimony of Herman Mitts.)

Q. Where were you when you saw her come back and visit the floating-trap?

A. I was in the cabin.

Q. Had you remained in the cabin all this time?

A. Yes, sir.

Q. Had you been on the lookout for her?

A. No, I was pretty much—I started to put my clothes on after she quit shooting around the point.

Q. Were you alone in the cabin at that time?

A. No. [154]

Q. During this interval—I mean this 30 or 40 minutes?

A. No, there were five of us in that cabin, I think.

Q. What were you doing at the time you saw her coming back and visit the floating-trap?

A. I don't get you.

Q. I say what were you doing from the time you saw her come back to the time you saw her visit the floating-trap?

A. I got—after she come back and the shooting began, I got out behind the logs—behind them.

Q. As soon as you saw her come back you went outside, did you? A. Yes.

Q. Was she shooting then?

A. Yes, they were shooting.

Q. They were shooting when you saw her at the floating-trap? A. Yes.

Q. That was the first shooting you saw her do, was it?

A. They were doing some shooting around the

(Testimony of Herman Mitts.)

point there at Hawk Inlet.

Q. Yes, but you didn't see the boat then when that shooting was going on, did you?

A. I just heard that.

Q. So the first shooting that you heard and saw both was when she was visiting the floating-trap?

A. Yes.

Q. And as soon as you heard that you went outside and went in behind something? A. Yes.

Q. You say you went behind some logs?

A. Yes.

Q. Where were those logs?

A. We had them piled up in front of the cabin.

Q. You sat behind there, I suppose, until the shooting was over?

A. Yes, just about. [155]

Q. What was the closest that the boat ever came to you on that morning?

A. Well, when she was straight out from the cabin—I guess it would be a couple of thousand feet.

Q. Now, whereabouts was she when she turned out to sea?

A. When she left and turned out to sea she was something—she was up to the Bay trap there.

Q. She was close to the Bay trap—how far from the face of the Bay trap?

A. Well, I couldn't say exactly how close she was to the trap.

Q. Well, your best opinion?

(Testimony of Herman Mitts.)

A. I would say between 300, 500 or a thousand feet.

Q. 500 to 1,000 feet—that is when she was doing the last firing? A. Yes.

Q. You couldn't see the name of the boat that time, could you? A. No, sir.

Q. Until you saw her here in town—when was that?

A. I seen her three weeks after that happened.

Q. Was that about the time you came in here to be present at the preliminary hearing downstairs?

A. Yes, I think it was.

Q. That is the time you saw her?

A. That is the time I saw her.

Q. How did you happen to see her at that time?

A. I was down to the City float.

Q. Were you all alone when you saw her there?

A. No, there was—I don't remember whether there was three or four of us.

Q. Three or four of you, cannery boys or trap watchmen?

A. Yes, some of them was those people.

Q. Was anybody else with you?

A. I don't remember who was along.

Q. How did you happen to go down to the City float to look at the boat? [156]

A. We just took a walk down there, I guess.

Q. Just by accident or did you go down on purpose to see if you could recognize the boat?

A. I guess we went down to see if we could recognize it.

(Testimony of Herman Mitts.)

Q. You went down to see if you could recognize it—did the game warden go with you at that time?

A. I don't remember if he was with us or who it was—somebody was with us.

Q. Then you recognized it, did you?

A. I won't say I recognized it but she looks pretty much like her.

Q. Then you recognized it because it looked pretty much like it. Now, then, we will go to the 5th of July. This happened about what time on the 5th?

A. Oh, this was something like one o'clock in the morning.

Q. It was the morning of the 5th? A. Yes.

Q. And it was dark then? A. Yes.

Q. What was the first that you knew about this boat coming?

A. Why, I heard some engine outside.

Q. You were in the cabin at the time, I suppose?

A. That woke me up.

Q. The engine woke you up? A. Yes.

Q. And you got up, did you? A. Yes.

Q. And went outside?

A. I woke up the rest of the boys in the cabin—I woke up Swanson first, I think it was.

Q. You woke them all up, did you?

A. I woke Swanson up first, I think.

Q. You woke Swanson up? A. Yes.

Q. Then Swanson got up and you got up and you went outside, I suppose? [157]

A. No, I didn't go outside.

(Testimony of Herman Mitts.)

Q. Then you stayed in the house?

A. Stayed in the cabin.

Q. Did you at any time during this occasion, when this boat was out there, did you go outside of the house? A. That night?

Q. Yes. A. Yes.

Q. When?

A. After they started to shoot I went out.

Q. After they started shooting?

A. Yes.

Q. Where were they when they started shooting?

A. Well, this boat was—if she wasn't tied up the floating-trap, it was pretty close to it—of course it was dark but I know she was close to it.

Q. How far were you from the floating-trap, then?

A. Well, that is between three and four thousand feet.

Q. About 4,000 feet—did you know what the boat was shooting at? A. No, I didn't.

Q. How many shots did you hear on that occasion?

A. Oh, there was a bunch of shots fired.

Q. How many?

A. There was quite a few—40 or 50 shots, I guess.

Q. Did you say 40 or 50—I couldn't catch you?

A. Yes—something like that.

Q. About how long did they stay around the floating-trap then?

A. Well, I couldn't say for sure—30 or 40 min-

(Testimony of Herman Mitts.)

utes—might have been an hour.

Q. What happened then?

A. Well, when they left they pulled out towards this Hawk Inlet trap.

Q. They pulled out towards the Hawk Inlet trap, and when did you see them last? [158]

A. I didn't see them—I saw the—

Q. You just saw them when they pulled out from there with the boat, I suppose?

A. I couldn't exactly see them—I saw the light sometimes, and sometimes I didn't see the light.

Q. Did they have any lights on the boat?

A. Sometimes I saw lights and sometimes I didn't.

Q. I mean on the 5th? A. Yes.

Q. You watched them pretty closely while they were there the night of the 5th, didn't you?

A. Well, yes, in a way.

Q. Well, you knew as soon as you could find out, what was going on out there, didn't you?

A. Well, I didn't know what was going on except—

Q. You saw the boat, you heard the engine—the engine woke you up? A. Yes, sir.

Q. And you got up and you stayed up until the boat left there? A. Yes.

Q. And the only reason why you got up was on account of the boat coming in there?

A. Yes.

Q. Sure—and as soon as the boat was gone, I suppose you went back to bed? A. Yes.

(Testimony of Herman Mitts.)

Q. And you observed the boat as well as you could all the time she was out there? A. Yes.

Q. And you heard her come, and as near as you could tell she either tied up to the floating-trap or she was pretty close to the floating-trap?

A. Yes.

Q. And then you saw her go towards the Hawk Inlet trap, and that [159] is the last you know of her whereabouts that day—that is about it, isn't it?

A. There was some more shooting going on after she got around that point.

Q. That is the point at Hawk Inlet?

A. Yes, sir.

Q. About how many shots do you think you heard around there?

A. I would say 30 or 40 shots.

Mr. SMISER.—I would like to ask the witness what date he is speaking of.

A. July 5th, I understand.

Mr. RODEN.—That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. You stated that on the 8th you saw the boat come in and go around the Hawk Inlet point?

A. Yes.

Q. And you heard some shooting around there?

A. Yes.

Q. And you saw a boat come back, and then there was the shooting that you described?

(Testimony of Herman Mitts.)

A. Yes, then the shooting begun again afterwards.

Q. Now, on the 5th, that was about one or two in the morning—the night of the 5th, was it?

A. Yes.

Q. And you say the boat was tied up at the floater-trap?

A. Yes, either tied up or pretty close—it was dark and I couldn't see.

Q. But you heard this shooting you have described? A. Yes.

Q. And you men ran out in the woods and heard the bullets hit the limbs, etc?

A. Yes, sir. [160]

Q. Now, when the boat left there did I understand you to say it went back to Hawk Inlet?

A. It went around the point of Hawk Inlet.

Q. And you heard shooting around there that night? A. Yes.

Q. Did it come back any more to your camp?

A. No, I couldn't hear any more after they got through there.

Mr. SMISER.—That is all.

(Witness excused.)

Testimony of Carl Peterson, for the Government.

CARL PETERSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of Carl Peterson.)

Direct Examination.

(By Mr. SMISER.)

Q. What is your name? A. Carl Peterson.

Q. Where were you working during the month of July, 1919?

A. Working for P. E. Harris and Company at Hawk Inlet.

Q. What were you doing?

A. I was watching a trap.

Q. How far is the trap that you were watching from Admiralty Cove?

A. A couple of miles.

Q. Were you there on July 5th? A. Yes.

Q. And July 8th? A. Yes.

Q. I will ask you if you were awakened that morning at any time. A. What?

Q. Were you awakened that morning of July 8th by any noise? A. Yes.

Q. What sort of a noise? [161]

A. There was some shooting going on.

Q. Where was the shooting from there?

A. Out from the bay—from the water.

Q. Did you look out—see anything out there?

A. After I got out from the shack.

Q. What did you see?

A. There was a boat laying outside.

Q. And before you left the shack did you hear any shots striking around?

A. Yes, I heard a few shots bumping against the shack.

Q. Did any of the bullets come in the shack?

(Testimony of Carl Peterson.)

A. Yes, three bullets come in the shack.

Q. If this was the shack, this square piece of paper here represents the way the shack was situated, where were you sleeping?

A. I was sleeping up in that end.

Q. Which way was your bed, this way or this way? A. This way.

Q. Was your head this way, or your feet?

A. This way.

Q. Where did these bullets pass with reference to where you were sleeping?

A. Oh, three or four inches from alongside of me.

Q. Where did they land?

A. Two of them sitting in the hind part of the shack, and one was laying on the floor.

Q. Were you in bed at the time? A. Yes.

Q. Did you hear bullets pass you? A. Yes.

Q. What did you do then?

A. I took my gun and went outside.

Q. Where did you go?

A. I fired a few shots when I went down on the beach. [162]

Q. How many? A. About 13, I guess.

Q. You fired 13 shots?

A. Yes—I couldn't reach them—they was too far.

Q. Where did you go when you got on the outside? A. Behind the rock.

Q. I will ask you whether the boat fired any after you got on the outside. A. Fired 2 shots.

Q. Did you hear those bullets? A. Yes.

(Testimony of Carl Peterson.)

Q. How close did they come to you?

A. They wasn't very far away.

Q. After you got behind the rock did you do any shooting? A. Yes—fired two or three shots.

Q. You fired how many?

A. I fired 13 shots altogether that morning.

Q. What did this boat do after this shooting?

A. Left.

Q. Where did it go?

A. Went up to Admiralty Cove—in that way.

Q. And could you recognize the boat? A. No.

Q. What time in the morning was this?

A. About 5 o'clock.

Q. About 5 o'clock? A. Yes.

Q. Now, after the boat passed around the point toward Admiralty Cove, I will ask you whether you heard any other shooting around there.

A. Yes, I thought I heard a couple of shots,—I was up in the shack.

Q. You went back in the shack?

A. Yes. [163]

Q. And you thought you heard a couple of shots?

A. Yes.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. RODEN.)

Q. You think you heard about two shots, after the boat left your place? A. Yes.

Q. Did you stay up that morning, or did you go back to bed? A. I stayed up.

(Testimony of Carl Peterson.)

Q. And how far out would you say the boat was when you last saw her?

A. About 400 yards.

Q. And you couldn't recognize the boat?

A. What?

Q. You couldn't see what boat it was? A. No.

Mr. RODEN.—That is all.

(Witness excused.)

Testimony of John Hanson, for the Government.

JOHN HANSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. What is your name? A. John Hanson.

Q. Where do you live?

A. My home is in Washington, Whatcom county.

Q. Where were you employed during June and July of 1919? A. In July?

Q. June and July? [164]

A. In June I was up here working in Icy Straits, Strawberry Point.

Q. What company were you working for?

A. Pacific American Fisheries.

Q. What were you doing?

A. Taking charge of a trap up there.

Q. Watching a trap? A. Yes, sir.

Q. At Strawberry Point? A. Yes, sir.

Q. Was there anyone else there with you?

(Testimony of John Hanson.)

A. Yes; there was two men—another fellow by the name of Lee.

Q. Who was the other—you say there were two men?

A. Yes; there was another man besides me.

Q. You didn't mean there were two besides yourself? A. Only one besides myself.

Q. Were you watching this trap on the 30th day of June? A. Yes, sir.

Q. I will ask you if anything occurred on the night of the 30th of June there at your trap?

A. Yes.

Q. What occurred?

Mr. HUBBARD.—Now, if the Court please, we desire to put in our objections to the testimony of this witness.

The COURT.—What is the objection?

Mr. HUBBARD.—The evidence is not admissible. It is a transaction that occurred on the 30th day of June at a point a long distance from where the transaction took place which we are trying. It is not in any way connected with the case which is on trial, and there is nothing that connects it up in any way with that transaction. The evidence is inadmissible—it is incompetent, irrelevant and immaterial as to this case, and has a tendency to prejudice the minds of the jury.

The COURT.—I think, Mr. Smiser, that I indicated what my ruling is on these matters. If you can connect this boat with any [165] similar offenses—holding up traps—it would be evidence of

intent and purpose, but if this witness' testimony is not any more connecting than the last witness' testimony—

Mr. SMISER.—Well, it is.

The COURT.—I would have sustained an objection to the last witness' testimony—I would have stricken it out if the motion had been made because that witness could not identify the boat and he did not identify any men that were on it. Unless this witness can identify the boat, or identify the men, or connect it in some other way, the objection will be well taken.

Mr. SMISER.—I think it will be fully identified, your Honor.

The COURT.—Very well, I will admit it subject to a motion to strike it when the testimony is finished.

Mr. HUBBARD.—We understand that as far as the testimony of the last witness is concerned it is subject to your Honor's ruling that if it isn't connected the motion to strike will be sustained. It might still be connected by other witnesses—it is true that this last witness did not identify it—it might be connected by some other witness, but if it is not we propose when the Government has its case in to make our motion.

The COURT.—I think the last witness' testimony ought to be stricken because it was not connected.

Mr. SMISER.—The witness testifies to certain facts, your Honor, that are testified to by some other witnesses.

The COURT.—If that witness or any other witness is willing or able to swear that on that occasion this boat did the work, that would be a connection.

Mr. SMISER.—That is just what several witnesses did—Henry Alexander for one, Andrew Abrahamson for another, Swanson for another.

The COURT.—Yes, but they swore about July 8th.

Mr. SMISER.—The last witness swore about July 8th. He testified about July 8th. [166]

The COURT.—Yes, but he did not testify that the same boat was there on July 5th, and the other witnesses did. He did not connect it in any way whatsoever. It is only inferentially that one could come to the conclusion that the last witness is talking about the same occurrence that the other witnesses are talking about—I cannot tell—

Mr. SMISER.—Cannot tell except the fact that the boat came there and tied up to floater-trap No. 4 about one o'clock the night of the 5th and did some shooting at the camp and took the course that was described by the other witnesses—he tells us all the details that the other witnesses have detailed, but he does not recognize the boat—Henry Alexander testified about that—he was out there on the water when the boat came in there.

The COURT.—How do you know that Henry Alexander was talking about the same occurrence that the last witness was talking about?

Mr. SMISER.—Because it was the same boat, at the same time and at the same place.

Mr. HUBBARD.—More than two miles away.

Mr. SMISER.—I think it is fully connected, your Honor.

The COURT.—I do not think the last witness' testimony has been connected at all.

Mr. SMISER.—If your Honor please, he certainly testified as to the 8th.

The COURT.—I mean as to the 5th.

Mr. SMISER.—But as to the 5th, he testifies to all that the other witnesses testified to except the fact that he could not recognize the boat because it was dark and he could not see it.

The COURT.—That being the case, how do you know, or how do the jury know, or how does anybody else know that he is talking about the same occurrence the other witnesses are talking about?

Mr. SMISER.—Because it happened at the hour and the place that they detailed.

The COURT.—The hour is indefinite—he says about—about is an [167] indefinite time—one cannot tell—there might have been another boat that came in there shooting.

Mr. SMISER.—He made it as definite as it seems to me a man could make a thing.

The COURT.—You would have to jump at a conclusion that the last witness was talking about the same occurrence that the other witnesses were talking about.

Mr. SMISER.—Shall I proceed?

The COURT.—Yes, if you connect it up.

Q. Mr. Hanson, you say that on the 30th of June,

(Testimony of John Hanson.)

1919, you were at this trap that you were watching?

A. Yes.

Q. I will ask you if any boat came into that trap on that date?

A. Yes, came a boat in there in the evening of the 30th of June.

Q. What time in the evening?

A. About, well, half-past eight—about that time.

Q. Where were you when the boat came in there?

A. I was on the floating scow I lived on—had a house there.

Q. On the floating scow? A. Yes.

Q. What did the boat do when it came in there?

A. He tied up to the trap.

Q. Then what did you do?

Mr. HUBBARD.—I understood the witness to say a cannery boat came in at half-past eight.

The WITNESS.—I didn't say cannery boat. There came a boat in the evening up to the trap and tied up.

Q. (By Mr. SMISER.) Now, tell what you did when this boat came in and tied up to that trap.

A. Well, I went out outside of the house where we lived and took a look at it.

Q. Well, you took a look, and then what did you do?

A. And soon after I went in the dory and started to pull over.

Q. Went in the what? [168]

A. In the dory.

Q. And went to pull out where?

(Testimony of John Hanson.)

A. Went to pull over to the trap.

Q. Go ahead and tell what happened.

A. Well, I came something about halfway and I heard the noise of a bullet some place near by me.

Mr. HUBBARD.—If the Court please, it seems to me that before the witness testifies to any more detail he should be asked whether he recognized that boat or recognized the parties on it.

Mr. SMISER.—I will ask that at the proper time.

The COURT.—I have indicated what the ruling will be—if it is not connected it will be stricken.

Mr. HUBBARD.—If the Court please, the witness has testified that he saw a boat. Now, he knows whether or not he recognized that boat, and if he knows that boat, or if he saw any of the parties there he can testify that he recognized them. If he did the testimony might go in, but to put in a lot of detail here of something that transpired there before it is identified to the jury—

The COURT.—If he does not identify the boat it does not hurt you in any way whatsoever. How can it hurt you?

Mr. HUBBARD.—I do not know that it would, if the Court please.

The COURT.—If he does not know anything about what boat it was, or cannot identify the boat or the parties on it, it does not hurt you; consequently let counsel develop his case the way he wants to, then if it is not connected it will be stricken out. I cannot direct him as to what order

(Testimony of John Hanson.)

he shall put his testimony in.

Mr. HUBBARD.—I am inclined to think, if your Honor please, that testimony of this kind does have a tendency to hurt, even if it is afterwards stricken out. We will save an exception to the testimony.

The COURT.—Proceed.

Q. (By Mr. SMISER.) Well, you heard the noise of a bullet— [169] did you hear the gun fired? A. Yes, I heard a gun fired.

Q. Then what did you do?

A. I stopped pulling then.

Q. Now, go on and tell what happened.

A. The fellow up on the trap spoke to me and says, “You better go back to that old scow and stay,” he says, “and behave yourself or I will plug you,” or “throw you overboard” or “put you down to the bottom,” or something like that.

Q. What did you do then?

A. I turned back to the camp where I came from—where I live.

Q. How many shots did you hear up to that time?

A. I didn’t count the shots really then but afterwards I thought about eight shots in all was fired around there at that time.

Q. Well, now, you went back to your scow?

A. Yes.

Q. What did you do then?

A. Well, my partner come out, and he went in the boat with me and we both pulled out then.

Q. He got in the boat with you and you both pulled out then?

(Testimony of John Hanson.)

A. Yes, the same way again—over to the trap.

Q. Did you get out to the trap?

A. No, we didn't.

Q. How far did you get?

A. We came about halfways.

Q. What occurred, if anything?

A. Came bullets then also—shooting then, and I saw a bullet then went right by my oars and fell down in the water.

Q. You saw the bullet striking on the water near your oars? A. Yes, sir.

Q. What did you do then?

A. Well, we stopped pulling then, and we say to each other, "We won't take any chances," and we went back again. [170]

Q. You went back to your scow?

A. To the scow where we lived.

Q. Now, how many men did you see on the trap at that time? A. We saw three men.

Q. Did you notice the size of these men—did you take note of the size?

A. That man that handled the gun seems to me to be the size man probably like somewhere around 6 feet—something like that.

Q. How did his size compare with the defendant, Al Weathers?

A. I couldn't say—I wasn't near enough for to see him—I wouldn't know him by face at all.

Q. Not knowing him by face, but how did his size compare with Al Weathers' size?

A. All I can say about his size is the fact that the

(Testimony of John Hanson.)

nearest I can judge it is something about six feet—that is all I can say about the size of the man who was handling the gun at that time—as close as I can judge or that I could judge at that time.

Q. What were the sizes of the other two men?

A. I didn't see them very good—they was walking around there—working—it seems to me they were smaller size.

Q. Smaller size than the first man? A. Yes.

Q. Were the other two about the same size, or did they differ in size?

A. The other two, you mean?

Q. Yes.

A. I couldn't say that—I couldn't say the difference of them other two men.

Q. Now, I will ask you if you saw that boat that they tied up to that trap at that time—did you see the boat? A. I saw the boat, yes.

Q. Do you know what boat that was?

A. No, not at that time. [171]

Q. Well, did you afterwards in any way find out what it was?

A. Well, they took us into town here and we found a boat by the dock down here on Front Street that seemed to be like it.

Q. I will ask you whether or not you recognized it as the same boat?

Mr. HUBBARD.—Now, if the Court please, I think I will object to the testimony. The witness has stated that he did not recognize the boat at that time.

(Testimony of John Hanson.)

The COURT.—I know, Mr. Hubbard, but you might see a thing at one time and then see it at another time and know it was the same thing.

Mr. HUBBARD.—He might come to the conclusion that the boat he saw several weeks later was the same boat, but his testimony is being admitted on the ground that he identify the boat.

The COURT.—He does not have to identify it at that time.

Mr. HUBBARD.—We will save an exception to the testimony on that ground, if the Court please, and on the further ground that the boat at the time it was recognized as he said was in the hands of the United States Marshal and had been illegally seized by the United States Marshal.

The COURT.—What effect would that have?

Mr. HUBBARD.—I simply want to save the exception.

The COURT.—Very well.

Q. (By Mr. SMISER.) I will ask you whether or not you recognized it as the same boat, speaking of the time you came into Juneau here and saw the boat “Diana”—I ask you if you recognized it as the same boat that was out at your trap on the 30th of June?

A. I would say it looks like that boat.

Q. Now, at the time you saw the boat at Juneau were there any other boats around except that, or was that the only one there?

A. Around our trap?

Q. No, was there any other boat, when you went

(Testimony of John Hanson.)

to look at the boat at Juneau, the boat that you said looked like the one that was at your trap, were there any other boats around the dock at [172] that time, or only the boat you were looking at?

A. No, I couldn't see any other looks like that boat—that was the nearest I could see around there.

Q. Were there any other boats that did not look like it?

Mr. HUBBARD.—Let me understand. He said, “Yes, it looked the nearest like that of any” he saw.

Mr. SMISER.—Suppose he did say it—what of it?

Mr. HUBBARD.—I want to understand what he said.

The COURT.—Yes, that is what he said.

Q. Now, were there any other boats there when you were looking at it to find out what boat it was—were there any other boats around there?

A. Yes, there was—there was many boats around.

Q. Now, I want to ask you about the shots that were fired when you were getting out of your wangan and going towards the trap where the boat was located—could you tell where these shots were coming from?

Mr. HUBBARD.—Now, if the Court please, I will move at this point to strike out the testimony of this witness on the ground that he has not identified the boat, and on the further ground that at the time the boat was tied up at the dock testified to and about which questions were asked, she had

(Testimony of John Hanson.)

been seized by the United States Marshal and was in the hands of the United States Marshal and cannot be used as evidence against the defendant here.

The COURT.—I cannot see what difference it would make whose hands it was in—whether it had been seized or not. If the witness recognized the boat it would not make any difference.

Mr. HUBBARD.—I think there are decisions holding that where property of the defendant has been seized it is not to be used as evidence against him.

The COURT.—Is it being used as evidence against him? Nobody has brought the boat in here as evidence.

Mr. HUBBARD.—I reserve an exception to the Court's ruling.

The COURT.—The statute gives you an exception. I think, Mr. [173] Smiser, if that is as far as this witness can go, that it looked nearer like it than any other boat that he saw, that it is not sufficiently connected.

Q. (By Mr. SMISER.) Please make it as plain as you can whether this in your opinion was the same boat that was at your trap on the 30th of June.

Mr. HUBBARD.—If the Court please, I think I will object to that—the witness has testified.

The COURT.—Overruled.

A. I say it looks like it, the nearest I could see of all them boats around—the shape of the boat and the mast, and it looked almost the same.

(Testimony of John Hanson.)

Q. Can you state whether in your opinion it was the same boat or not?

Mr. HUBBARD.—Now, if the Court please, I will object to that question. The witness has stated that it looked like it, and it was the nearest of any boat there like it.

The WITNESS.—I couldn't swear to it it was the same boat.

Mr. HUBBARD.—Now he is asking him to give an opinion about it and he has stated the facts.

The COURT.—The last part of your objection is well taken—the first part is not. He cannot give his opinion—he can give his judgment.

Q. Now, I will ask this question—I know that you cannot swear positively that it was the same boat, but please state whether or not in your judgment it was the same boat.

A. It was—yes, it was, in my judgment.

Mr. HUBBARD.—We save an exception to that. The witness has stated that he could not swear to it, and it isn't now a question of his judgment and it isn't a question of his opinion.

The COURT.—Well, I am rather inclined to think that is well taken. He has testified that it looks like the boat but he couldn't swear to it. Now, that can go to the jury for what it is worth.
[174]

Q. Now, I will ask you, Mr. Hanson, whether you could tell at the time you heard these shots being fired from what direction they were coming?

(Testimony of John Hanson.)

A. Well, they came from the trap so far as we could judge it.

Q. It came from the trap?

A. From the trap; yes.

Q. Was that the trap where the boat was?

A. Yes, sir.

Mr. HUBBARD.—If the Court please, I do not like to keep interrupting all the time, but I object to it because it is immaterial. He has said that he could not identify this boat.

The COURT.—He has identified it in a way, and I said it can go to the jury for what it is worth. I shall instruct the jury what all of this evidence is admitted for—I can cover it by my instructions, I think. The objection is overruled.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. HUBBARD.)

Q. How far was the boat away from you?

The COURT.—At which time?

Mr. HUBBARD.—He said he saw a boat at the trap—I want to get the distance he was from the trap.

A. I was about a thousand feet.

Q. How far is your wangan from the trap?

A. 2,000 feet.

Q. When you started out, had the boat tied up to the trap at that time? A. Low tide.

Q. I didn't ask you about the tide, but I will ask you now and we will go back to it—what was the tide? A. The tide was flooding.

(Testimony of John Hanson.)

Q. What?

A. I don't understand you—how you mean.

Q. Do you know whether it was a low or high tide at the time? [175]

A. It was about half low tide at the time, as I remember.

Q. Half low? A. Half low.

Q. Medium tide? A. Medium tide.

Q. Don't you know it was low tide out there?

A. I couldn't remember exactly how it was—I don't think it was exactly low—it was about half tide—something about half tide.

Q. What time of the day was it, did you say?

A. It was half-past eight in the evening.

Q. The boat was at the trap when you first saw it, was it?

A. Oh, no, I saw it before it arrived.

Q. Saw it before it arrived at the trap? A. Yes.

Q. When it went to the trap on which side of the trap did it go to?

A. It landed on the port side of the trap.

Q. That would be on the opposite side from where you were? A. Facing the outside water; yes.

Q. From where you were—you would have to see the boat through the trap?

A. Well, it was laying slanting that way; yes, a little.

Q. What part of it could you see, now, from your wangan?

A. Well, we couldn't see very good after they had landed at the trap, no—all I saw, of course, was some

(Testimony of John Hanson.)

of the boat between the piles, but you couldn't see it clear.

Q. You were looking at the boat through the piling of the trap, John?

A. No, I saw the boat before it landed at the trap also.

Q. I understand, but after it was at the trap all you could see was through the trap?

A. Oh, I could see very good—see the mast and a little boom on the mast.

Q. You couldn't see the hull of the boat?

A. I could see it but not plainly.

Q. Then you say when you started out to the boat you came out [176] about a thousand feet before you came back? A. About halfway.

Q. And you were about 2,000 feet from the boat when it tied up there? A. When it tied up there?

Q. You were 2,000 feet away? A. Yes.

Q. And you say there was another man there?

A. With me; yes.

Q. Where was he?

A. He was in the house—we were both in the house in the beginning.

Q. You were both in the house in the beginning?

A. Yes.

Q. Did you see it through the window first?

A. Saw it through the window.

Q. Which way was it coming from?

A. Well, it was coming from the south like, or something that direction—south like—that way like—I couldn't exactly give you the point,—Point Adol-

(Testimony of John Hanson.)

phus is a point out in the water—that is the point it came almost straight into our trap.

Q. How is the water out there at this trap that you watched—what kind of water it is?

A. What kind of water?

Q. Yes.

A. It is part of Icy Straits.

Q. It is sort of a glacial water there, isn't it?

A. Yes.

Q. It is colored? A. Oh, no.

Q. It isn't clear water?

Mr. SMISER.—I object to this as immaterial and not cross-examination.

The WITNESS.—A lot of ice drifting around there also.

Q. But the water, you say, is discolored from this glacial slit?

A. I couldn't say much about that, Judge. [177]

Q. When had you been to the trap prior to the boat coming there? A. What?

Q. How long before the boat came there had you been out to the trap?

A. Oh, about four hours or a little better, from that time I left the trap until the boat came.

Q. Had the cannery tender been there that day?

A. It was there in the morning also.

Q. What time?

A. Early in the morning, around 8 o'clock or half-past eight—somewhere around there—it was early in the morning.

Q. How long did it stay there?

(Testimony of John Hanson.)

A. He didn't say long.

Q. Why?

A. He fished the trap—took out all the fish there was in the morning and went away.

Mr. HUBBARD.—That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. Mr. Hanson, were there any fish in the trap at the time this boat came up there?

Mr. SMISER.—If your Honor please, I forgot to ask a question or two of this witness.

A. Yes, there was.

Q. What time had you seen the trap last before the boat came up?

A. We were over to the trap about 4 o'clock in the afternoon.

Q. How many fish would you estimate were in the trap at that time?

A. Well, I estimate there was about 200 fish at that time.

Q. I will ask you whether or not this boat lifted the trap on that occasion?

The COURT.—What do you mean by lifted—do you mean robbed the trap?

Mr. SMISER.—Yes, sir.

The COURT.—To lift the trap would be to take the fish out. That would be a perfectly legitimate proposition,—to lift a trap is one thing—to rob a trap is another thing. [178]

Q. I will ask you whether or not this boat robbed the trap on that occasion?

(Testimony of John Hanson.)

A. Why, yes, they took out them fish there was.

Mr. SMISER.—They took out the fish. That is all.

Recross-examination.

(By Mr. HUBBARD.)

Q. How long after the boat went away did you go out to the trap—how long was it before you went out?

A. Not very long—something about 10 minutes—10 or 15 minutes.

Q. That would be about what time?

A. Well,—I don't understand you.

Q. You say you went out in about 10 or 15 minutes after the boat went away? A. Yes.

Q. When did the boat go away?

A. Well, the boat was around there something about an hour.

Q. You fix the time the boat was there about an hour? A. Yes.

Q. And you went out 10 minutes afterwards and you looked in the trap, did you? A. Yes.

Q. Could you see anything?

A. There was no fish.

Q. The water was muddy, was it?

A. No more than ordinary—I couldn't say about that part—I didn't pay any attention to that exactly—most of the time the water used to be pretty clear around there.

Q. The trap was an open trap at the time the boat went there? A. She was fishing.

Q. She was fishing—her tunnels were open?

A. Her tunnels were open.

(Testimony of John Hanson.)

Q. How large was that tunnel?

A. I suppose something about 8 inches—8 or 10 inches.

Q. You think the tunnel is about 8 or 10 inches wide? [179]

A. About—the last tunnel.

Q. Isn't it more than that?

A. Not the last tunnel; no.

Q. How long is it, up and down?

A. It is 20 feet.

Q. It is 20 feet up and down?

A. Yes, 20 feet up and down.

Q. There was nothing to prevent any fish that were in there going out through that tunnel if they wanted to? A. They couldn't go out on that tide.

Q. The tide was running the wrong way for the fish to get out? A. The right way for the fish to get in.

Q. The right way for the fish to get in but not so that they could go out?

A. It was running right for the fish to get in—the tunnels are here, the fish go through, the tide comes this way, then the fish goes up on the tide, up to the side of the pot.

Q. Was this tide coming up against the tunnel?

A. It was running against the tunnel also, yes.

Q. Now, why wouldn't fish inside of the trap swim against that current?

A. He don't turn on that tide—starts up on the tide always coming in.

Q. After he has gone up as far as he can go don't he turn around and go up against the tide?

(Testimony of John Hanson.)

A. He stands up against the tide.

Mr. HUBBARD.—He stands up against the tide, and the trap was open. That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. You say the tunnel was about 8 or 10 inches wide? A. 8 to 10 inches.

Q. Which end of the tunnel do you speak of, the inside or the outside of the tunnel—the mouth or the end of it? [180]

A. It is the mouth of the tunnel is 8 to 10 inches wide—it is the mouth of the tunnel, and back they are about 10 feet wide.

Q. Is that the entrance?

A. You know they shape one tunnel.

Q. Where does the fish go in when it enters the tunnel—where does it enter—what do you call that where the fish go into the tunnel, and how wide was it there?

A. They are about 8 or 10 feet—it is a little different according to the pens.

Q. It is 8 or 10 feet where they go in?

A. They can go 8 feet and they can be 10 feet.

Q. And then at the other end where they go into the pot you say it is 8 or 10 inches?

A. Eight or 10 inches in the mouth.

Mr. SMISER.—That is all.

(Questions by the COURT.)

Q. When the fish passes through the tunnel what does he enter—into what?

A. The tunnel, into the spiller.

(Testimony of John Hanson.)

Q. Is, or is not, the fish caught then?

A. They are caught; yes—it is the last tunnel.

The COURT.—Very well.

(Questions by Mr. HUBBARD.)

Q. You say a fish is caught and cannot get out of the spiller?

A. He couldn't get out on that tide; no.

Q. But they can get out if the tide is proper?

A. When the tide was turned the other way they was apt to get out, some of them.

Q. Some of them could go out?

A. If the tide came the other way.

Q. So they really are not absolutely caught when they are in the trap, because the tide may change and they may go the other way?

A. In such a case we generally close the tunnel.
[181]

Mr. HUBBARD.—Oh, yes, but we are talking about an open tunnel. After you close it it is another matter. That is all. If the Court please, I suppose we should renew our objection and motion that this testimony be stricken on the ground that he did not identify the boat.

The COURT.—Overruled.

(Witness excused.)

Mr. SMISER.—If the Court please, there was a little misunderstanding between the Court and myself as to which witness was being discussed when your Honor said the witness had not identified the boat. I understood it was Herman Mitts but your Honor

(Testimony of Carl Peterson.)

was referring to Carl Peterson. I want to recall Mr. Peterson and ask him one or two questions.

The COURT.—Very well.

**Testimony of Carl Peterson, for the Government
(Recalled).**

CARL PETERSON, upon being recalled as a witness on behalf of the Government, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Mr. Peterson, in your examination in chief this morning you stated that you were the watchman on one of the Hawk Inlet traps around the point from Admiralty Cove, on the 8th of July last, did you not?

Q. And you further stated that about 5 o'clock in the morning a boat came in there, around that point, and did some shooting, is that right? A. Yes.

Q. Now, I want to ask you if any other boat besides the one that you testified to came in there that morning? [182] A. No.

Q. Was that the only boat that did any shooting there that morning? A. Yes.

Q. The one you testified about, about 5 o'clock?
A. Yes.

Mr. SMISER.—That is all.

Mr. HUBBARD.—No questions.

The COURT.—Were you there all the night—were you there all the time? A. Yes.

(Witness excused.)

Testimony of Homer Lee, for the Government.

HOMER LEE, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name. A. Homer Lee.

Q. Where were you employed during June and July of 1919?

A. At the Pacific American Fisheries.

Q. At what point were they located?

A. Strawberry Point.

Q. What were you doing at that point?

A. Trap watchman.

Q. Was there any other trap watchman located there with you? A. Yes.

Q. Who was that? A. Jack Ferguson.

Q. Was he with your company—the same company? A. Oh, the same company.

Q. Yes. A. John Hanson. [183]

Q. Where did you live there at that point—in what place? A. I lived in a cabin—shack or cabin.

Q. Where is that cabin located?

A. It was located a little ways from the trap.

Q. About how far from the trap?

A. About 2,000 feet.

Q. Is it on the shore or is it floating?

A. Floating.

Q. Now, you spoke of Ferguson being a watchman out there—who was he watching for?

(Testimony of Homer Lee.)

A. The Astoria and Puget Sound Company, I think it was.

Q. Now, where did he live?

A. He lived on the next float to us.

Q. About how far is his trap from your trap, if you know?

A. I never give that a very close estimation so I couldn't tell you so very close, but I think it was somewhere around 2,500 feet—I couldn't say.

Q. What did he sleep in out there—where did he sleep? A. He slept right on the trap.

Q. Was there a house or wangan built up on the trap?

A. There was a house—a shack there.

Q. Were you in that wangan on the evening of June 30, 1919—were you in your wangan?

A. Yes, sir.

Mr. HUBBARD.—I object to that as leading, if the Court please,

The COURT.—Overruled.

Q. Now, I will ask you if any boat came into this trap that you were watching on that date?

A. Yes, sir.

Q. What time in the day or night?

A. It was somewheres around 8 o'clock in the evening.

Q. When did you find out about it being there?

A. After it had got to the trap.

Q. What did Mr. Hanson do, if anything, at the time the boat arrived [184] at the trap?

A. He went in the dory and started out towards the trap.

(Testimony of Homer Lee.)

Q. Did you hear any shooting while he was going out in that direction? A. Yes.

Q. How many shots?

A. Three that I remember of.

Q. What did Mr. Hanson do after you heard these shots—did you see Mr. Hanson any more?

A. I saw him; yes.

Q. Where was he?

A. He was just about halfway between the wangan and the spiller.

Q. After these shots were fired what did he do?

A. Came back to me.

Q. Did he say anything to you?

Mr. HUBBARD.—I object, if the Court please.

The COURT.—Sustained.

Q. What did he do after these shots were fired?

A. Who—Mr. Hanson?

Q. Hanson.

A. He came back to me in the wangan.

Q. Then what was done?

A. I went in the dory with him.

Q. Where did you go?

A. We started out towards the trap again.

Q. What happened, if anything?

A. Began shooting again.

Q. Who did? A. The fellows on the trap.

Q. Did you see any people on the trap?

A. When I got outside I seen three—when I first got outside.

Q. Can you give a description of those men?

A. No, I cannot—I don't remember.

(Testimony of Homer Lee.)

Q. Did you go out to the trap? [185] A. No.

Q. How far did you go?

A. Just about halfway again—just about halfways between.

Q. Did you hear anything said at any time by the men on the trap? A. When I was in the dory?

Q. At any time while they were there?

A. Yes, I heard them say, "Go back to the scow."

Q. Did they say anything else?

A. He says some more but not that I could—I couldn't make out what he was saying.

Q. Now, you were going out with Mr. Hanson and you got out halfway and you heard some shots—did you hear any bullets? A. Yes.

Q. Where were they with reference to you—where were they passing?

A. There was only one that I could say distinctly where it passed—that passed back of me.

Q. Only one? A. Yes.

Q. Did you notice any striking in the water around? A. Yes.

Q. Where were they striking?

A. They were striking a little ways from the boat—to the side of the boat.

Q. Then you and Mr. Hanson turned around and went back? A. Yes.

Q. I will ask you what these men did down at the trap after that—what did they do?

A. They lifted the trap.

Q. You mean by that robbed the trap? A. Yes.

(Testimony of Homer Lee.)

Q. Do you know whether there were any fish in the trap or not? A. Yes.

Q. How many fish in it?

A. The last time I lifted the trap, I guess there would be around [186] 200 fish.

Q. What time was that?

A. That was the latter part of the afternoon—around about 5 o'clock.

Q. Around about 5 o'clock that same evening?

A. Yes.

Q. After you went back to the cabin what did the boat proceed to do—what did this boat down at the trap do after you went back to the cabin, you and Mr. Hanson?

A. She laid there for some time.

Q. What were they doing?

A. She was lifting the trap.

Q. After they lifted the trap what did they do?

A. She pulled away—pulled out in the Straits.

Q. Did you see the boat? A. Yes.

Q. Did you know what boat it was?

A. I seen one that looked very much like it.

Q. What boat was that that you saw that looked like it? A. "Diana."

Q. Where did you see the "Diana"?

A. Down at the dock here.

Q. What time was it that you saw it at the dock here in Juneau?

A. The 27th of July, I believe it was.

Q. When you saw it there did anybody point it out to you, or did you find it yourself?

(Testimony of Homer Lee.)

A. I saw it myself.

Q. I will ask you whether you recognized it as the same boat or not.

A. Yes, I recognized it as the same boat—very much the same.

Q. Did you examine the trap after the boat left there on the 30th? A. Yes, sir.

Q. How long after the boat left before you examined the trap—after the boat went away—when did you examine it?

A. Oh, I should judge 10 or 15 minutes, I think.

Q. Were there any fish in it? [187]

A. No.

Q. How were the lines?

A. The lines were practically the same.

Q. No difference in it?

A. Not that I noticed.

(Whereupon court adjourned until 2 o'clock P. M.)

AFTERNOON SESSION.

February 13, 1920, 2 P. M.

HOMER LEE on the witness-stand.

Direct Examination (Cont'd).

(By Mr. SMISER.)

Q. I will ask you whether or not you recognized the boat at the time you saw it at the dock at Juneau as the same boat that visited the trap on the 30th of June. A. Yes.

Q. I will ask you whether anyone pointed it out to you or whether you recognized it yourself.

(Testimony of Homer Lee.)

A. I recognized it myself.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. RODEN.)

Q. How close did you come to the boat, the time you were out to the trap you were watching—what is the closest you ever came to her?

A. About a thousand feet.

Q. And you say that this man Ferguson who was watching another trap—who does the trap belong to, the one he was watching?

A. The Astoria and Puget Sound, I think it was.

Q. That, you think, was 2,500 feet distant?

A. I think so—I couldn't say that for sure because I never gave it a close estimation.

Q. Isn't there another old trap in there, or a part of a trap in there, between your trap and Ferguson's trap? [188] A. No.

Q. There isn't? A. No.

Q. All right. That was on what date, Mr. Lee?

A. The boat was out there?

Q. Yes. A. The 30th of June.

Q. The only thing you could hear them say on the boat was, "Go back to the scow"—that is what he said to your partner Hanson?

A. That is all I heard plain.

Q. Could you understand anything else?

A. No.

Q. Then you saw that boat again, you say, on the 27th day of July? A. Yes, I think it was.

Q. Where did you see it?

(Testimony of Homer Lee.)

A. Down at the dock.

Q. Which dock?

A. Where the boats generally lay—halibut boats.

Q. You mean the City dock or the dock down there by the City float, down by the Standard Oil Company? A. No, this dock here.

Q. There are a lot of boats there quite often.

A. Where the boats generally lay in here.

Q. Where the big boats come?

A. Alongside of there; yes.

Q. Did you go down there to see if you could recognize her?

A. No, I came in on the cannery tender.

Q. You came in on the cannery tender and you tied up alongside of her, or close to her, did you?

A. Yes, sir.

Q. Then you knew her? A. Yes, sir.

Q. Can you swear positively that that is the same boat?

A. Well, no, I couldn't swear to it; no.

Mr. RODEN.—That is all.

(Witness excused.) [189]

Mr. HUBBARD.—I think we better interpose our objection here, that this witness' testimony should be stricken. He says the last thing that he couldn't swear to it positively.

The COURT.—It will go to the jury for what it is worth, as identification.

Testimony of J. H. Ferguson, for the Government.

J. H. FERGUSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. State your name.

A. John Henry Ferguson.

Q. Where were you employed during the months of June and July, 1919?

A. I was employed out at Strawberry Point.

Q. What company were you working for?

A. The Astoria and Puget Sound Packing Company.

Q. What were you doing?

A. Trap watchman.

Q. Where did you live at that point?

A. On the trap.

Q. What is there to live in?

A. There is a little house—7x8—something like that.

Q. Where is it located?

A. Right over the spiller.

Q. Do you know where a trap belonging to another company is situated near there? A. Yes.

Q. That was watched by Mr. Hanson and Homer Lee? A. Pacific American Fisheries?

Q. Pacific American Fisheries' trap—how far is your trap situated from their trap?

(Testimony of J. H. Ferguson.)

A. Well, I should judge about 1,800 feet—not over 2,000 feet—something like that—1,800 to 2,000 feet. [190]

Q. Which side of the trap is this house situated on with reference to where their trap is located?

A. My house is right out on the water—right out on the outside edge of the trap—right in line with their spiller.

Q. I will ask you if you were at that point on the evening of June 30, 1919.

A. I was on the trap; yes, sir.

Q. I will ask you if you saw a boat come in and approach the trap watched by Mr. Hanson.

A. Yes, sir, I did.

Q. Which way did it come from?

A. It came from the way of Hoonah.

Q. How would that be with reference to where you were and the other trap—how would its course be, I mean?

A. I do not *just* exactly what the course would be.

Q. Will you please place these papers somewhat in the position or as nearly in the position as you can, of your trap and their trap?

A. There is the position of my trap that I was watching, you see, and here is the position of the trap that those boys was watching.

Q. Where is your house on that trap?

A. My house is right here, on the outside edge of the water, the deep water, and their house is right here.

(Testimony of J. H. Ferguson.)

Q. Where was the boat when you first saw it?

A. The boat was off in this direction, coming from the way of Hoonah.

Q. In coming that way how near did it come to where you were?

A. It came within about 200 feet of my spiller—somewhere thereabout.

Q. Which way did it go?

A. Swung somewhat, turning off this way.

Q. With reference to the trap that was watched by Hanson, which way did it go? [191]

A. Same direction—this is the trap that was watched by Hanson, it swung port and come this way.

Q. What did it do when it got to that trap?

A. Tied up.

Q. I will ask you if you took any special notice of the boat at the time it was passing the trap.

A. Yes, I did; I was looking at it through the glasses when it passed that distance—somewhere around there—I don't know how close it was but I estimated it at that—I was watching them with the glasses until they came up and made that turn.

Q. I will ask you if you recognized that boat.

A. I did.

Q. What boat was it? A. The "Diana."

Q. I will ask you if you saw any men aboard of it. A. Yes.

Q. Who did you see that you recognized, if any-one?

A. A tall man like Mr. Weathers there, with a

(Testimony of J. H. Ferguson.)

smaller man, came to the aft end of it.

Q. You speak of Mr. Weathers—is that the defendant? A. Yes, sir.

Q. You say you watched through the glasses?

A. Yes, sir.

Q. After they tied the boat to the trap watched by Mr. Hanson what did they do, if anything?

A. One of the men crawled up on the capping and looked around and the other two started to lift the trap.

Q. I will ask you if you saw Mr. Hanson about that time anywhere? A. Yes, sir.

Q. Where did you see him?

A. He was coming in a rowboat from towards them to his wangan that he lived in.

Q. Where was his wangan with reference to these two traps you have placed?

A. Right about there. There was a dolphin off over here, and this [192] wangan which they lived in was moored to that dolphin.

Q. You saw Mr. Hanson, you say, come in a boat, and what did he proceed to do?

A. He started out to the trap.

Q. Which trap?

A. That he was watching—this Pacific American Fisheries' trap.

Q. Was the boat there at that time?

A. Yes, sir.

Q. Did he continue out there until he reached it?

A. No, he was stopped.

Q. How was he stopped?

(Testimony of J. H. Ferguson.)

A. By these young men telling him to go back and shooting at him.

Q. Did you see the shooting? A. Yes, sir.

Q. Hear it? A. Yes, sir.

Q. Did you hear what was said?

A. Yes, sir.

Q. What was said?

A. Well, they told him to go back to that scow and stay there, and then they told him they would leave money on the capping for him, and then that they would put him in the spiller and if he came out any further they would plug him and put him in the bottom.

Q. What did he do after this shooting, and after them telling him this?

A. He went back to the scow he was living on.

Q. Did you see what he did then?

A. No, I didn't—I heard him call to this man that was on the scow with him, Mr. Lee.

Q. You heard him call to Lee? A. Yes.

Q. What did the two do then?

A. Then they came right out to the trap.

Q. Now, tell what transpired. [193]

A. When they got quite a little ways from the scow they fired a shot at them; they kept on coming and he said, "You are as close to this trap as you are going to get," and they fired three shots in succession.

Q. Then what happened?

A. Then the boys went back to the scow.

Q. Then what did this boat do?

(Testimony of J. H. Ferguson.)

A. They proceeded to lift the trap and take the fish.

Q. What did they do after lifting the trap?

A. They set the trap back in fishing shape again, the same as it was when they started on it, and went right away.

Q. Do you know how many fish they took out of the trap?

A. Yes, I have an idea there was about 200.

Q. How did you find out?

A. I had been out over there visiting the boys that afternoon, and I dropped right up to the trap that afternoon as I came back and looked into it.

Q. And did you have occasion to examine the trap after the boat lifted it? A. Yes.

Q. What time did you examine it?

A. About 9:30, I think, in the evening.

Q. Were there any fish in it when you examined it? A. No, no fish.

Q. Were Mr. Hanson and Mr. Lee there?

A. Yes, they were on the trap.

Q. Did you know Al Weathers by sight at that time?

A. Not at that time, I didn't know that he was the man.

Q. When did you see him next?

A. I seen him here in the courtroom.

Q. Did you recognize him as the man?

A. Yes, he looked very much like the man.

Q. To the best of your belief state whether or not he was the man. [194]

(Testimony of J. H. Ferguson.)

A. There is no doubt in my mind but what he is the man.

Q. What was the size of the other two men that were with him?

A. They were a little bit smaller.

Q. Were they about the same size, or was there any difference in them?

A. No, one was very small and the other was halfway between.

Q. Have you seen Ike Weathers and Ernest Stage? A. Yes, sir.

Q. Know them now by sight?

A. By sight; yes, sir.

Q. How does the size of the two compare with the size of the two men you saw with Al Weathers on that occasion? A. Very much the same.

Q. Had this boat ever visited your trap at any other time? A. No, sir.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. HUBBARD.)

Q. I will ask you to look at this photograph and state whether or not that is a photograph of your traps out there—if you recognize it.

A. Not at that time.

Q. Here is a larger photograph; maybe this will be better.

A. Yes, that is very much like my trap, but there is no house on it.

Q. The house had been taken off before that picture was taken? A. Yes.

(Testimony of J. H. Ferguson.)

Q. That is the same trap?

A. That is the same trap.

Q. You see the other trap there? A. Yes.

Q. That is the trap you have been talking about belonging to the American Pacific Fisheries?

A. Yes, sir.

Q. Can you see the wangan from there? [195]

A. No, sir, I cannot.

Q. Now, you say the distance between your trap here and this trap is about 1,800 feet?

A. 1,800 or 2,000—yes, I judge about that.

Q. Isn't there another trap site there where traps are sometimes driven during the season, or have you been there other seasons?

A. No, that is my first season.

Q. You don't know, then, that there is a trap site in there between the two? A. I don't know.

Q. You say the distance from this point to this point is 1,800 feet? A. Yes; 1,800 or 2,000 feet.

Q. You say when the boat came in it came up near your trap and came right in? A. Yes.

Q. And when it got near you it swung and went to the other trap? A. Yes, sir.

Q. You had not seen the boat before that time?

A. No, sir.

Q. You didn't know any of the parties before that time? A. No, sir.

Q. Your identification of the defendant is from the fact that you have seen him since?

A. Oh, no.

Q. How did you do it, then?

(Testimony of J. H. Ferguson.)

A. No, the identification is from the time I saw him on the boat.

Q. I say, you saw him on the boat but you didn't know him? A. No, sir.

Q. He was a stranger to you then?

A. Yes, sir.

Q. You have seen him since? A. Yes.

Q. And you say it looks very much like the same man? A. Yes. [196]

Q. You have seen his size? A. Yes, sir.

Q. What is his size? A. I don't know.

Q. You have seen him here—he is about 6 feet, isn't he? A. Yes.

Q. Is that anything unusual for a man 6 feet tall to be working on these boats?

Mr. SMISER.—I object to that as being argumentative.

Q. (By Mr. HUBBARD.) You have stated to the jury that from your position on your trap here you could see Mr. Hanson and Lee on their wangan? A. I could.

Q. You could? A. Yes, sir.

Q. How far is the wangan beyond their trap?

A. Oh, about, say, 2,000 feet.

Q. Two thousand feet over beyond this trap is their wangan? A. Yes, sir.

Q. And you were standing on this trap here?

A. I was.

Q. So you could not only see those men—in order to see those men and what they were doing you had to look through the other trap?

(Testimony of J. H. Ferguson.)

A. No, sir, I did not.

Q. You had to look through the lead?

A. No, sir, I did not.

Q. You didn't have to look through the lead?

A. No, sir.

Q. You had a clear view from where you stood to their wangan? A. Yes, sir.

Q. According to your statement, the distance from your shack over to where they were was 1,800 and 2,000 feet, 4,000 feet? A. Yes, sir. [197]

Q. And you tell this jury that standing 4,000 feet away you heard the conversation between John Hanson and his partner?

A. No conversation—I heard him say—he was telling him that they were robbing the trap.

Q. You say you heard that 4,000 feet?

A. I did.

Q. You not only heard that but you saw what was going on? A. Yes, sir.

Q. You saw them get into a little boat?

A. Yes, sir.

Q. 4,000 feet away? A. Yes, sir.

Q. And you say you saw them take some fish out of the trap—how did they do it?

A. By power of some kind.

Q. Well, if you saw them couldn't you tell how it was done?

A. Well, I had an idea, yes, sir, how it was done.

Q. It isn't a question of idea—you are testifying to what you saw and heard. A. Yes.

Q. If you could see Hanson over here 2,000 feet

(Testimony of J. H. Ferguson.)

beyond in a little skiff you could certainly see what these men were doing at the trap which was only 1,800 feet from you, couldn't you?

A. No, sir, I couldn't; I wasn't looking through the glasses at the time they were taking the fish out. In fact they were down in the web at the time they were taking the fish out.

Q. All three in the web?

A. I wouldn't say how many.

Q. How do you know they were in the webbing?

A. They got down off the capping.

Q. You heard them talking?

A. While they were on the capping.

Q. You heard them talk—a conversation?

A. Yes, sir. [198]

Q. 1,800 feet away? A. Yes, sir.

Q. That is about six blocks, isn't it?

A. Somewhere thereabouts.

Q. About the distance of six blocks—ordinary town blocks, and you heard that conversation?

A. Yes, sir.

Q. And you tell this jury you heard that conversation? A. I do.

Q. And you not only heard that but you heard the conversation two thousand feet farther away?

A. Yes, sir.

Mr. HUBBARD.—That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. What sort of an evening was it, Mr. Ferguson?

A. It was a very clear, calm evening, with a slight

(Testimony of J. H. Ferguson.)

breeze blowing towards me.

Q. Would that make it easier or harder with that breeze carrying towards you for you to hear?

A. Make it much easier, carrying it towards me, and I have talked to the boys from my trap to their trap.

Q. You say you didn't hear any conversation between Hanson and Lee except you heard Hanson tell him they were robbing the trap? A. Yes, sir.

Q. Didn't hear anything else? A. No.

Q. What sort of a tone did he say that in—Hanson?

A. Seemed to be yelling it as loud as he could.

Mr. SMISER.—That is all.

Recross-examination.

(By Mr. HUBBARD.)

Q. You testified in this case on the preliminary examination, did you? [199]

A. Yes, sir.

Q. Did you testify there that the parties that were taking fish out of that trap had a scow at that time?

A. No.

Q. You didn't? A. I did not; no.

Q. You didn't say there in answer to the question, "How many men were working with this boat"? "A. There were the two men that got down on the scow by this time, and the other shorter man got down in the trap"?

A. No.

Q. You didn't say that?

A. No—they got into a skiff.

(Testimony of J. H. Ferguson.)

Q. I am not asking you what they got into—I am asking you if you did not say just what I have read to you here?

A. No, I did not—no, not that I can remember. I cannot remember of mentioning a scow.

Mr. HUBBARD.—That is all.

Testimony of Arvid Johnson, for the Government.

ARVID JOHNSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. What is your name? A. Arvid Johnson.

Q. Where were you employed during the months of June and July, 1919?

A. At Ground Hog Bay fish-trap.

Q. What company employed you?

A. Deep Sea Salmon Company.

Q. What was your duty there?

A. I was trap watchman. [200]

Q. Was there anybody else situated there with you? A. No, not with me.

Q. Was there any other trapman there near you?

A. Yes.

Q. Who was that? A. Ted Likeness.

Q. What was he doing? A. Watching a trap.

Q. For what company? A. Funter Bay.

Q. I will ask you if you were at this point, Ground Hog Bay, on the 7th day of July, 1919?

(Testimony of Arvid Johnson.)

A. Yes, sir.

Q. I will ask you whether any boat came in there on that occasion? A. Yes, sir.

Q. What time did it come in there, day or night?

A. On the 17th, you say?

Q. On the 7th. A. yes.

Q. Day or night? A. Night.

Q. What time in the night? A. Two o'clock.

Q. Where were you at the time it came in?

A. In bed.

Q. Did you hear it when it came in? A. Yes.

Q. Did you get up? A. Yes.

Q. What did you do?

A. Looked out through the window.

Q. What did you see? A. I saw a boat.

Q. Where was it? [201]

A. Alongside of the trap.

Q. What was it doing?

A. They wasn't doing anything then—they were tied up.

Q. Did you see any men? A. No.

Q. What occurred after that, after you looked out of the window?

A. They hollered to me, "If you stick your head out through the window this time we will blow it off."

Q. Then what did you do?

A. I went back again and closed the window.

Q. What happened then?

A. One fellow stepped on the trap and another one said, "Has he lighted the lamp yet?" And I heard

(Testimony of Arvid Johnson.)

the other fellow say "No," and he said, "Make him do it."

Q. Was anything said to you about lighting the lamp? A. Yes.

Q. What was said?

A. Told me to go ahead and light that lamp.

Q. Did you do it? A. Yes.

Q. Now, you were inside the cabin at that time?

A. Yes.

Q. Then what did you do?

A. Sat down on the bed.

Q. Then what happened?

A. They went ahead and lifted the trap.

Q. How long were they there at that time?

A. Oh, about an hour.

Q. Now, I will ask you if any shots were fired?

A. Yes.

Q. Tell about that.

A. They fired two shots when they came there first.

Q. When they first came there? A. Yes.

Q. Could you tell where those shots went?

A. No. [202]

Q. Did they fire any more?

A. After they were done lifting they fired two or three more; I don't know which.

Q. Could you tell where they hit?

A. They hit the stovepipe on top of the roof.

Q. The stovepipe on top of the roof of the cabin?

A. Yes.

Q. I will ask you if this same boat had visited you at any other time? A. Yes.

(Testimony of Arvid Johnson.)

Q. At that point? A. Yes.

Q. When?

A. The latter part of June or the first part of July—I don't know really what date it was.

Q. Was that day or night? A. Night.

Q. What occurred on that occasion. A. What?

Q. What happened—what did they do?

A. They just walked on the trap and looked the trap over.

Q. Did they approach the cabin at that time?

A. What?

Q. Did they come near the cabin?

A. Yes, not very far away.

Q. How far? A. About 12 feet.

Q. Where were you at that time?

A. In the cabin.

Q. Where in the cabin? A. At the window.

Q. Who came up to within 12 feet of the cabin?

A. Al Weathers.

Q. Anybody with him?

A. Oh, he had a little fellow with him. [203]

Q. What little fellow?

A. I didn't know his name—I didn't know him—a short, little fellow.

Q. Have you seen Ernest Stage here about the courthouse? A. Yes.

Q. How did the size of that fellow compare with Ernest Stage's size?

A. Just about the same size as him.

Q. That was the last of June or the first of July?

A. Yes.

(Testimony of Arvid Johnson.)

Q. Now, when he came up to the window did he say anything to you?

A. I heard him holler, "What are you doing?" he says, and I looked out and he was standing right in front of the window, so he said, "There is no fish in that darned trap there." I said, "No, the company has been lifting them."

Q. Go ahead and tell all that was said.

A. Well, he says, "I suppose the fish are running better inside of two weeks, and we will come around and buy some fish from you."

Q. What time of the day or night was that?

A. About 12 o'clock at night.

Q. Did you see the boat at that time?

A. Yes.

Q. Do you know what boat it was? A. Yes.

Q. What boat was it? A. The "Diana."

Q. Now, at the time they were there on the 7th of July I will ask you whether or not they got any fish out of the trap? A. Yes.

Q. About how many, if you know?

Mr. HUBBARD.—If the Court please, I object to that. It is not material in this case whether they did or did not get fish out of the trap. [204]

The COURT.—Overruled

A. Oh, it was—I don't know for sure—between 1,500 and 2,000 fish, I couldn't say.

Q. They were there, you think, about an hour that time? A. Yes.

Q. Do you know how they got the fish out of the trap? A. Brailed them out.

(Testimony of Arvid Johnson.)

Q. Did you see them brailing them out?

A. No, but I heard it, from the winches going.

Q. Now, had you seen that boat there at any other time? A. I saw it once before.

Q. When was that?

A. I don't know the date it was—it was in June some time.

Q. Where did you see them? A. At the trap.

Q. What were they doing?

A. Lifting the trap.

Q. Some time in June, you say? A. Yes.

Q. Was that night or day? A. Night.

Q. What time? A. Oh, around midnight.

Q. Was there any shooting done on that occasion?

A. No.

Q. Did you see how many men were there?

A. There were three.

Q. Could you tell about what size men they were?

A. No, not for sure.

Q. Well, you couldn't tell for sure, but could you tell whether they were the same size or not?

A. It was dark, but they were the same size men I see here. Q. Same size as what men?

A. Al Weathers, Ike Weathers and Ernest Stage—about the same [205] size—I don't know—I couldn't say for sure.

Q. Did you hear they talk any at that time?

A. No.

Q. I will ask you if the time you heard them talking on the 7th of July, when they told you about lighting the lamp, and not to come out, etc., if you

(Testimony of Arvid Johnson.)

recognized the voice of anyone?

A. I thought it was the same voice that I heard there before.

Q. What do you mean by before—what time?

A. Around the last part of June.

Q. Or the first of July, the way you put it at first?

A. Yes.

Q. You mean it was the same as the man who talked to you through the window and you talked to through the window later?

A. I think it was the same voice, and it sounded like it.

Q. You thought it was the same voice? A. Yes.

Q. Now, you thought you recognized it as whose voice?

A. Al Weathers'—I couldn't say for sure, but that is the way it sounded to me.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. HUBBARD.)

Q. What was the last time you say they were there? A. 7th of July.

Q. 7th of July, the last time? A. Yes.

Q. At 2 o'clock in the night of the 7th? A. Yes.

Q. That was after midnight? A. Yes.

Q. You had gone to bed? A. Yes.

Q. Were you asleep when they came up?

A. Yes. [206]

Q. What woke you up then?

A. They hollered to me.

Q. They called you up? A. Yes.

(Testimony of Arvid Johnson.)

Q. Didn't they shoot before they called you up?

A. No, they hollered to me, "If you stick your head out through the window we will blow it off."

Q. You were not sticking your head out through the window, were you?

A. No, but they told be if I should do it they would.

Q. You hadn't at that time put your head out, had you? A. No.

Q. If you had stayed in bed they would not have shouted out?

Mr. SMISER.—We object to that question. He don't know what they would have done.

Q. That was on the 7th, you say?

A. Yes.

Q. How long did they remain there?

A. About an hour.

Q. Then they left there about 3 o'clock in the morning of the 8th? A. Yes.

Q. Now, how do you fix that time of 3 o'clock on the morning of the 8th that they left there—did you have a watch? A. Yes.

Q. Did you look at it? A. Yes.

Q. Did you go out to see the trap after they had gone away? A. Yes.

Q. How many fish were in there?

A. None that I could see.

Q. Couldn't see any? A. No.

Q. It was dark, wasn't it? A. Yes. [207]

Q. You couldn't have seen them if there had been fish in there, could you? A. Yes.

Q. You could? A. Yes.

(Testimony of Arvid Johnson.)

Q. At night? A. Yes.

Q. How was the tide—was it low tide or high tide there? A. I don't know.

Q. This is a floating-trap? A. Yes.

Q. Well, then, it goes up and down with the tide, doesn't it? A. Yes.

Q. So it doesn't matter about the tide on a floater? A. No.

Q. How deep is the spiller on these traps?

A. About 32 feet.

Q. And the water stands how high on the trap, on a floating-trap such as you have there?

A. Half the log is sticking up.

Q. The water comes up halfway up on the trap; is that the idea? A. On the logs.

Q. How much water would be in the trap there—how deep would the water be—that is, inside of the spiller, we are talking about—how much water was there in there?

A. Oh, there would be about 34 feet—34 or 35 feet.

Q. And you say you could see if there were any fish in that trap? A. Yes.

Q. You could?

A. There wasn't no fish there.

Q. Wasn't any fish—you didn't see any?

A. No.

Q. If the fish were in the trap you could see them, you say? A. Sure. [208]

Q. You can see down to the bottom of 30 feet of water, can you? A. No.

(Testimony of Arvid Johnson.)

Q. The trap was open, was it? A. Yes.

Q. It was fishing? A. Yes.

Q. The tunnel of the trap wasn't closed when they came there? A. No.

Q. How large a tunnel have they on that trap?

A. I don't know how deep the tunnel is on the trap.

Q. How wide is it?

A. About 8 feet where they go in.

Q. Eight feet where they go in? A. Yes.

Q. How wide is it where it terminates in the spiller? A. Oh, about 8 inches.

Q. About 8 inches there—it was open at the time you were speaking of—at that time the trap was open? A. Yes, she was fishing.

Q. Did you state what time in the month of June you went to watching there?

A. No, I couldn't say for sure—I think it was the 8th, or something.

Q. About the 8th of June?

A. Yes—I don't know for sure—I don't remember.

Q. You stated there was a second or third time the boat was there and got some fish out of the trap—what time was that? A. What time?

Q. The first time you testified to.

A. That was around the middle of the month—I don't know—I had no—

Q. Around the middle of the month—can't you fix the date? A. No, I cannot.

Q. You have testified two or three times in this

(Testimony of Arvid Johnson.)

case, haven't you? A. Yes. [209]

Q. Why didn't you mention that before when you were testifying, that there were fish taken out of that trap the middle of the month?

A. There was only once I testified it was around the 12th, I thought it was.

Q. You didn't testify at any time that there were any fish taken out of your trap around the 12th?

A. That question hasn't been asked me.

Q. Oh, you didn't testify because the question wasn't asked you. When did you tell the District Attorney that there was another occasion besides the one you testified to on the 7th?

A. I told him that the first time I was in here.

Q. You told him that the first time you were in here? A. Yes.

Q. But he didn't ask you anything about it on the other examinations?

A. No, not the last time I was on the stand he didn't.

Q. No, nor the first time either. Did you testify to that on the preliminary examination in this case before Judge Burton? You didn't at that time say anything about there being any fish taken out of your trap about the 12th, did you?

A. Not that I remember.

Q. No, and you didn't at the first trial of Ernest Stage—you didn't say anything about it, did you?

A. No, not the first trial.

Q. And the District Attorney knew it all the time? A. Yes, I think so.

(Testimony of Ted Likeness.)

Mr. HUBBARD.—That is all.

(Witness excused.) [210]

Testimony of Ted Likeness, for the Government.

TED LIKENESS, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. What is your name?

A. My name is Ted Likeness.

Q. Where were you employed during the months of June and July, 1919?

A. Well, I was employed at the Thlinket Packing Company, Funter Bay.

Q. How far were you situated from the trap where Arvid Johnson was watching at that time?

A. Well, I was, I guess, off about a couple of thousand feet.

Q. Were you there at your trap on July 7th—the night of July 7th? A. Yes, sir.

Q. Where were you at about 2 o'clock that night?

A. I was in bed.

Q. I will ask you whether or not you heard any shooting there in the direction of the trap Arvid Johnson was watching. A. I did.

Q. Did you get up and go out?

A. No, I didn't go out, but I got up.

Q. Did you see anything over there that way to attract your attention? A. No, I didn't; no.

(Testimony of Ted Likeness.)

Q. How far away were you from there?

A. Well, it must be about 2,000 feet or more.

Q. Did you go over the next morning?

A. No, I didn't go over the next morning, but I think I went over the next morning after that.

Q. Now, I will ask you whether you know the boat "Diana"? A. Yes, I do.

Q. Did you know it at that time?

A. Yes. I had seen it before that time—of course I didn't see it exactly that time. [211]

Q. Well, had you ever seen that boat "Diana" at or near your trap?

A. Well, I couldn't say that—I don't know that I did at that time—I seen it before that.

Q. Well, before that, that is what I am talking about. A. Yes, I seen it before that.

Q. How long before?

A. I seen it the 10th of June.

Q. How did you happen to see the boat at that time?

A. Well, the boat come along the traps there, and the watchman who was on the trap before Johnson, why, he seen the boat and he come over to my trap and notified me there was a boat at his trap, and he was anxious to see this boat because they stopped at the trap, and one of them got on the trap.

Q. They got off their boat on to the trap?

A. On the trap; yes.

Q. Which trap is this—I do not understand—your trap or some other trap?

(Testimony of Ted Likeness.)

A. Yes, Ivar Johnson's trap—the Deep Sea trap, and he seemed to be very anxious to see who it was, so he waved at them and made a signal for them to come over, and as they came over along the shore towards my trap, that boat came in alongside the dolphin, near it, so I took the watchman over so he could talk to them.

Q. Did you go on the boat at that time?

A. Yes, I did.

Q. Who was on the "Diana" at that time—what men?

A. Well, I didn't know them at the time—I didn't ask their names, but I recognized the two guys—the third I didn't pay any attention to because he was down in the steamroom.

Q. Which two did you recognize?

A. It was a fellow named Ernest Stage and Al Weathers.

Q. You recognized those two? A. Yes, sir.

Q. That was on the 10th of June?

A. That was on the 10th of June.

Q. I will ask you if you noticed at that time what equipment that [212] boat had, whether it had any equipment for fishing?

Mr. HUBBARD.—If the Court please, I think we will object to that—I do not think that is material.

The COURT.—I think it is unnecessary details—

Mr. SMISER.—All right.

Q. You went on board of her at that time, did you? A. Of what?

(Testimony of Ted Likeness.)

Q. You went on board of the "Diana" at that time? A. Yes, I was aboard, yes.

Q. Talked to these fellows?

A. Talked to the guys; yes.

Q. After this conversation what did the "Diana" do?

A. Well, they left and went right on the way they were heading before they stopped there.

Mr. SMISER.—That is all.

Cross-examination.

(By Mr. HUBBARD.)

Q. Which way was that?

A. That was towards—along the shore there towards Excursion Inlet—in that way—they went out Icy Straits, anyway.

Q. That would be going out Icy Straits way, wouldn't it? A. Yes.

Q. They went right out that way? A. Yes.

Q. There were no fish taken or nothing done that day you are talking about, was there?

A. No, sir.

Q. You just simply saw the boat, and Ivar Johnson hailing the boat? A. Not Ivar.

Q. Who was it that hailed the boat?

A. It was the watchman at the trap before Ivar there.

Q. You called the boys in for some reason?

A. Yes, sir.

Q. And that was on the 10th day of June?

[213] A. Yes, sir.

(Testimony of Ted Likeness.)

Q. How did you fix the date?

A. I mark down every date I want to know particularly about.

Q. And you have a memorandum or writing to that effect, that on the 10th day of June they were up to that trap and you saw them and talked to them? A. Yes, sir.

Q. On that day? A. Yes, sir.

Q. And when they left there that day, the 10th day of June, they went right out Icy Straits?

A. Yes, sir.

Q. What time of day was it?

A. It was in the afternoon—I don't know exactly what time it was—it was in the afternoon.

Q. In the afternoon of the 10th?

A. Yes.

Q. Do you know how long it was after this date you speak of, the 10th, that Ivar Johnson came there to the trap?

A. No, I couldn't say—I couldn't say that.

Q. You say, though, that on the night of the 7th that you heard some shots toward the trap that Ivar was watching? A. Yes, sir.

Q. You were not there and don't know anything about what transpired except as he told you about it thereafter?

A. He didn't tell me about it—I heard them.

Q. You heard two shots? A. Yes.

Q. And then you talked to him about it afterwards, didn't you? A. Oh, yes.

Q. You talked about it, you and Ivar. That was

(Testimony of Ted Likeness.)

about 2 o'clock the morning of the 8th that you heard these shots? A. About that time, yes.

Q. Have you got a memorandum or note by which you can fix that date, too? [214]

A. Yes, I have.

Q. And it was the morning of the 8th?

A. Yes, it was the morning of the 8th.

Q. Two o'clock in the morning? A. Yes.

Mr. HUBBARD.—That is all.

(Witness excused.)

Testimony of M. S. Whittier, for the Government.

M. S. WHITTIER, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name.

A. M. S. Whittier.

Q. Where are you employed?

A. Deputy clerk for the Collector of Customs, Juneau.

Q. Were you so employed during the year 1919?

A. Yes, sir.

Q. I will ask you if you keep a record of the registry of boats? A. I do, sir.

Q. I will ask you if you have a record of the registry of the boat "Diana"? A. We have, sir.

Q. Is that registered in your office?

A. It is, sir.

(Testimony of M. S. Whittier.)

Q. When was it registered there?

A. The vessel arrived from the district of Puget Sound in February, 1919, and in May we issued a permanent document to her in this district.

Q. To whom was this issued?

A. Issued to Alvin Weathers. [215]

Q. Was he the master of the boat then?

A. According to the records.

Q. Did that remain under that registry for some period of time? A. Until September, 1919.

Q. Then the boat was changed?

A. A change in the title.

Q. Do you know the defendant by sight?

A. I do; yes, sir.

Q. Is he Alvin Weathers that registered as captain of this boat? A. Yes.

Mr. SMISER.—That is all.

Mr. HUBBARD.—No questions.

(Witness excused.)

Testimony of W. E. Fielding, for the Government.

W. E. FIELDING, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. State your name, please.

A. W. E. Fielding.

Q. Where are you employed, Mr. Fielding?

(Testimony of W. E. Fielding.)

A. Standard Oil Company.

Q. Were you so employed during the months of June and July, 1919? A. Yes, sir.

Q. Are you pretty well acquainted with the gas-boats plying between here—

A. Most of them, yes.

Q. I will ask you if you know the gas-boat “Diana”? A. Yes, I know her.

Q. Did you know her during June and July of last year? A. In June—not July.

Q. During the time you knew her who was operating her? [216] A. Al Weathers.

Q. Do you know Ike Weathers?

A. Yes, I know them both.

Q. Do you know whether he operated on the boat during that time?

A. I think both of them were together; I wouldn't say, though—sometimes Al came down alone.

Q. But you did see both of them on the boat?

A. Yes, I saw both of them on the boat.

Q. For what purpose did they come to your place of business? A. For oil.

Q. Came down to the oil dock?

A. To the oil dock for fuel; yes, sir.

Q. I will ask you whether you supplied them oil on different dates during June? A. Yes.

Q. Was that oil charged or paid for at the time it was received? A. It was charged.

Q. To whom was it charged?

A. Charged to the launch “Diana.”

Q. Who guaranteed it, if anyone?

(Testimony of W. E. Fielding.)

Mr. RODEN.—We object to the question, who guaranteed the oil bill—what has that to do with the case?

The COURT.—The objection is overruled.

Q. Who guaranteed the payment of it, if anyone?

A. Well, the Northern Packing Company—we charged it to the Northern Packing Company because we originally had it under the Northern Packing Company, the account of the launch “Diana.”

Q. Was that the reason or was there some other reason for not charging it direct to Weathers,—did you have any account with Weathers?

A. Well, when he first came up I understood he owned the boat, but we had no account with him and we charged it to the Northern Packing Company for that reason, so we would be protected if by chance Al Weathers did not pay for it. [217]

Q. Were you authorized by the Northern Packing Company to do it?

A. Not then—not when he first came up, no—when he came up I asked Mr. Estes if it would be all right and he said yes.

Q. You asked Mr. Estes? A. Yes.

Q. He is manager of the Northern Packing Company? A. Yes.

Q. And then when you asked him if it would be all right—

A. Asked him if it would be all right to give them the price which he formerly had.

Q. You ran it under the Northern Packing Com-

(Testimony of W. E. Fielding.)

pany, then? A. Yes, sir.

The COURT.—Who was it that told you to run it under the name of the Northern Packing Company?

A. We had formerly had it under the name of the Northern Packing Company, the launch “Diana,” and when it appeared the next season,—the previous season it was under the Northern Packing Company, but this season, the first time she came up was February or March, I don’t remember, so we run it under the same account as we did the previous year.

The COURT.—Who told you to do it?

A. No one told me at that time—I did it myself.

Q. (By Mr. SMISER.) I understood you to say somebody told you that was all right?

A. Somebody did tell me it was all right, after he come up here—after Estes got up here, as soon as I could get in touch with Mr. Estes I knew the account was O. K. then.

Q. Did you get in touch with him?

A. Yes, I got in touch with him.

Q. And what did he say?

A. He said it was O. K.

Mr. HUBBARD.—It don’t make any difference what Estes said.

The COURT.—What are you trying to show, Mr. Smiser?

Mr. SMISER.—Simply to show that the Northern Packing Company was [218] guaranteeing

(Testimony of W. E. Fielding.)

the oil, the purchase of the oil that was made by the "Diana."

The COURT.—As discrediting Mr. Estes' testimony?

Mr. SMISER.—As going to show his interest. However, it might come more correctly in rebuttal, your Honor—I expect it would on that aspect.

The COURT.—Yes, I think it would be rebuttal because Mr. Estes has not testified in this case, and we do not know anything about the Northern Packing Company.

Mr. SMISER.—I ask then that that part of his testimony as to the payment of the oil be stricken.

The COURT.—Yes, all of that testimony will be withdrawn from the jury.

Mr. SMISER.—The other part of it, I understand, will not be stricken. That is all.

Cross-examination.

(By Mr. RODEN.)

Q. Did you see Al Weathers on the boat "Diana" in the month of June, Mr. Fielding?

A. In June—yes.

Q. Did you ever see Ike on the boat in the month of June?

A. I couldn't say—I wouldn't swear to it, that I saw him. They were both together most of the time, but sometimes Al ran down alone.

Q. That was pretty early in the season, though?

A. That was early in the season.

(Testimony of John Hanson.)

Mr. RODEN.—That is all.

(Witness excused.)

(Whereupon court adjourned until 10 o'clock to-morrow morning.) [219]

MORNING SESSION.

February 14, 1920, 10 A. M.

**Testimony of John Hanson, for the Government
(Recalled).**

JOHN HANSON, recalled on behalf of the Government, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Mr. Hanson, in your testimony in chief yesterday you stated that you saw a boat that came to your trap on the 30th day of June, 1919, did you? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you say that you saw another boat in Juneau some time after that that you recognized as being the same boat to the best of your knowledge that was at your trap on the 30th of June; is that correct? A. Yes, I did.

Q. What boat was it that you recognized as being the same boat?

A. The name was "Diana" on the boat.

Mr. HUBBARD.—If the Court please, the witness testified to that, and I do not see that there is any necessity for having him repeat it.

(Testimony of A. C. Hanson.)

The COURT.—It will save time to let him answer it.

Q. You say it was the “Diana”?

A. It was the “Diana,” the name of it.

Mr. SMISER.—That is all.

Mr. HUBBARD.—No questions.

(Witness excused.) [220]

Testimony of A. C. Hanson, for the Government.

A. C. HANSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows.

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name. A. A. C. Hanson.

Q. What is your business, Mr. Hanson?

A. Gas-boat.

Q. What is the name of the boat?

A. I am on the “Tillicum” now.

Q. What were you doing during the spring and summer of 1919? A. I was running the “Dixie.”

Q. The gas-boat “Dixie”? A. Yes.

Q. Did you know the Weathers boys at that time?

A. I have seen them, that is all.

Q. Did you know Al Weathers by sight?

A. Yes.

Q. And Ike Weathers? A. Yes.

Q. Did you know Ernest Stage? A. Yes.

Q. Do you know what boat, if any, they were operating during June and July, 1919?

(Testimony of A. C. Hanson.)

A. Well, in June I see them laying down alongside the dock here.

Q. Do you know what boat they were operating?

A. Well, they were on the "Diana."

Q. How many times did you see them?

A. Oh, I don't know—I remember one time they was laying alongside down there.

Q. Do you remember whether they were operating this boat during July? [221]

A. Well, I couldn't say—I didn't see them that I know of—don't remember it.

Q. Do you know who was the master of the "Diana" at the time you saw her?

A. No, I do not know who was master—I suppose Al was, though—I don't know.

Mr. SMISER.—That is all.

Mr. HUBBARD.—No questions.

(Witness excused.)

Testimony of John C. Lund, for the Government.

JOHN C. LUND, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. State your name, please. A. J. C. Lund.

Q. What business were you engaged in during the year 1919? A. Game warden.

Q. I will ask you whether, during this time, during the spring and summer of 1919, you knew the

(Testimony of John C. Lund.)

defendant Al Weathers A. Yes, sir.

Q. Did you know Ike, his brother? A. Yes.

Q. Know Ernest Stage? A. Yes, sir.

Q. Do you know what they were doing during June and July?

A. Why, they were operating the "Diana."

Q. Is that the gas-boat "Diana"? A. Yes, sir.

Q. Did you see them often during those months?

A. I did, during the month of June.

Q. I will ask you whether or not you were with anyone about the middle of July, on July 17th, when you were out for some [222] purpose of investigation? A. On July 17th?

Q. Yes. A. Yes.

Q. For what purpose were you out at that time?

A. I was looking out for fish pirates.

Q. Where were you on the 17th of July?

A. On a little island outside of Swanson's Harbor.

Q. Do you know what that is called?

A. I don't think it has any name.

Mr. HUBBARD.—I cannot catch the witness' statements for some reason or other.

A. The island has no name.

Q. Can you place it on the chart?

A. Yes, sir—this is the island here we was on.

Q. Where is that island situated?

A. Lynn Canal and Chatham Straits, the junction of them.

Mr. HUBBARD.—Put a cross-mark there so we will know.

(Testimony of John C. Lund.)

Q. Now, what time did you go to that island that day? A. About three o'clock in the morning.

Mr. HUBBARD.—If the Court please, I object to the testimony in reference to that island. There is nothing in this case pertaining to it—we are not charged with taking fish from any place except this place.

The COURT.—I cannot tell yet—it is preliminary to something, I presume.

Q. Was anybody with you at the time?

A. Yes, sir.

Q. Who? A. George Johnson.

Q. How did you get to that island?

A. Why, we went out there in a skiff from Swanson's Harbor.

Q. You and George Johnson went in a skiff from Swanson's Harbor? A. Yes. [223]

Q. What did you do when you got there?

A. We got on the point of the island there.

The COURT.—This is the 17th of July?

Mr. SMISER.—Yes, sir.

The COURT.—This offense is alleged to have been committed on the 8th of July?

Mr. SMISER.—Yes, sir. I want to introduce a fact tending to show that the defendant was engaged in similar operations up to that time.

The COURT.—I never heard of the rule applying to a time after a thing is done, because it would not throw any light on the intent with which the thing that had been done was done.

Mr. SMISER.—My idea is that there was a con-

(Testimony of John C. Lund.)

spiracy between these parties to do these illegal acts and that conspiracy was still active and going on at this date—it was part of the same plan and scheme that had existed for some time—that it had not terminated but was still in existence, and therefore I think it would be competent.

The COURT.—Well, I think it is very doubtful, and I think it would be very unsafe to admit this testimony.

Mr. SMISER.—I would like to reserve the right to recall the witness if the Court should change its opinion before we close our case.

The COURT.—Very well. Of course, I am open to conviction on the subject, but my opinion is that it is not competent.

Q. (By Mr. SMISER.) Now, Mr. Lund, I will ask you if you saw the defendant Al Weathers on the day that he was arrested on this charge?

A. Yes, sir.

Q. Where did you see him?

A. City dock or the City float.

Q. In Juneau? A. In Juneau; yes, sir.

Q. Did you have any conversation with him at that time? [224] A. Yes, sir.

Q. Please state the substance of that conversation.

A. Why, I met him on the dock down there, and he approached me and said, “I suppose all the bulls in town are looking for me,” and I told him I didn’t know whether they were or not.

Q. What did he mean by the bulls?

(Testimony of John C. Lund.)

A. I suppose he meant officers—and he said he wouldn't mind taking a shot at a bull if he was under cover some place.

Q. That was just the day he was arrested?

A. Yes, sir.

Q. Had he been arrested at that time?

A. I don't think so.

Q. Did you have a warrant for him at that time?

A. No, I had no warrant.

Q. Said he would not mind taking a shot at a bull if he was under cover? A. Yes, sir.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. HUBBARD.)

Q. Where did you say this was, this conversation you had with him? A. At the City float.

Q. What were you doing down at the City float?

A. I was waiting to go out on the "Dixie," I believe—waiting for Johnson to come down.

Q. You are game warden for the Territory of Alaska? A. Exactly.

Q. And you spent your time last summer going around on Government boats after pirates?

Mr. SMISER.—I object to that.

The COURT.—I think it is competent cross-examination.

Mr. SMISER.—If your Honor please, it is part of his duties as game warden.

The COURT.—Very well, he can say so, and you can draw it out of [225] him or redirect examination. This is cross-examination now.

(Testimony of John C. Lund.)

The WITNESS.—What was the question?

Q. (By Mr. HUBBARD.) I asked you if you did not spend your time during the months of June and July aboard Government boats, or boats chartered by the Government, out at sea chasing pirates?

A. No, sir.

Q. What time did you spend on them?

A. I spent about 10 days on Government boats, and the rest of the time I was on my own boat.

Q. What is the name of your boat?

A. It has no name.

Q. Is that a Territorial boat?

A. No, it is mine.

Q. Your own individual boat? A. Yes, sir.

Q. Now, during last season what time did you spend in connection with your duties as a Territorial officer,—what days did you devote to your duties as a Territorial officer? A. All the time.

Q. Then you consider when you are out on the sea you are looking after game, is that it?

A. If I am sent out; yes.

Q. When you are sent out? A. Yes, sir.

Q. Were you sent out? A. I was, yes.

Q. By whom?

A. I don't know exactly—I don't know exactly who it was that sent me.

Q. You don't know who it was that sent you, and you have really no idea, either, have you? Why don't you tell the jury who sent you? You know well enough.

(Testimony of John C. Lund.)

A. If you want to know all the circumstances I can tell you. [226]

Q. I think the jury might want to know under what circumstances you were out there.

A. Every officer in town that could get away were out looking for fish pirates.

Q. Why didn't you say so—and you were working under instructions from somebody, weren't you? A. Yes, sir.

Q. And you know who that somebody was?

A. It was the marshal's office, I believe.

Q. Did the marshal's office have authority over you to do these things?

A. They have by consent of the Governor's office.

Q. By having the consent of the Governor's office? A. Yes, sir.

Q. And the Governor advised you that he had given that consent, of course? A. Yes, sir.

Q. So you went out looking after pirates?

A. Yes, sir.

Q. Part of the time you were on the "Dixie," you say?

A. I was out one week one trip,—I was out twice on her.

Q. And part of the time you were out in your own small boat?

A. I wasn't looking for pirates on my own small boat.

Q. Where did you say you met Al Weathers when you met him?

A. On the City dock—that is, the fish float.

(Testimony of John C. Lund.)

Q. What time of day was it?

A. Oh, I would say it was along in the afternoon, about three o'clock.

Q. Of what day? A. The 17th of July.

Q. And you say you had a conversation there with him? A. Yes, sir.

Q. What was it he said to you?

A. Why, he said, "I suppose all the bulls are looking for me." [227]

Q. What did you say?

A. I told him I didn't know.

Q. You knew better than that, didn't you?

A. I didn't know they were looking for him.

Q. Why did you make a misrepresentation of that kind to him?

A. Because I didn't know they were looking for him—I didn't have any warrants or anything for him.

Q. You don't have to have a warrant when you are sent out that way, do you—you didn't carry warrants out when you went on the hunt after pirate boats, did you?

A. Didn't have anybody to have a warrant for at that time—had to find them first and then get a warrant.

Q. That was on the 17th? A. Yes, sir.

Q. About what time of day was it?

A. About three o'clock, I think.

Q. You must be mistaken about that, aren't you, Mr. Lund? Stop and think about that.

A. Possibly I am—it was in the afternoon.

(Testimony of John C. Lund.)

Q. They have an indictment against him on the 17th—he was way out on Admiralty Island taking fish out of a trap, you know that, don't you?

A. I don't know anything about it.

Mr. SMISER.—That is the 17th of June.

Q. (By Mr. SMISER.) When was it you were at this point you designated on this chart?

A. 17th of July.

Q. The same day you had this conversation here in town? A. No, sir.

Q. What day did you have this conversation here in town? A. The 18th.

Mr. HUBBARD.—That is all—there is no use to examine a man who will swear one minute a thing is the 17th, and turn around the next minute and say it is the 18th. [228]

Redirect Examination.

(By Mr. SMISER.)

Q. Now, as to the date you had this conversation with him, you say that was the 18th?

A. I will tell you exactly when it was (referring to memorandum book) that I had the conversation.

Q. Well? A. On the 18th of July.

Q. Have you anything marked in your book there that makes you know that? A. Yes.

Q. What is it?

A. Well, I just got on there "Weathers arrested," that is all.

Q. You know that was the day he was arrested?

A. I know it was the same day.

Q. The day he was arrested?

(Testimony of John C. Lund.)

A. Yes, because I saw Johnson about half an hour afterwards and he told me he just pinched him.

Q. Now, I will ask you if, as game warden, it is a part of your duties to look after fish pirates—violations of the fishing law, etc.? A. Yes, sir.

Mr. SMISER.—That is all.

(Witness excused.)

(Whereupon the jury retired, and Mr. Smiser makes the following offer of the confession of Ernest Stage:)

Mr. SMISER.—If your Honor please, the evidence we want to offer now—I really want to ask Mr. Johnson a question or two about the Weathers boys and Stage operating this boat, and then I want to offer the confession of Ernest Stage, and I want to offer that as evidence against the defendant Al Weathers as the confession of a co-conspirator. I will say to your Honor that the question is quite an intricate one, and one which I am not absolutely free to say is absolutely competent, [229] but I believe there is ground for an argument that it is. I have not been able to prepare a brief on it fully. Mr. Backstrom has worked and got the points in hand better than I have really, but the argument will be that it is a confession made by a co-conspirator during the existence of a conspiracy, and as such it is competent. In the first place those confessions bind co-conspirators where there is a charge of conspiracy, and in this case our position is that it is a conspiracy, although it is

not charged in the indictment, but the fact that it is not charged as a conspiracy in the indictment does not cut any figure—it is not necessary that that be done. We have a very plain decision on that point, that where a man is charged with the commission of a crime—a murder case, for instance—where there is no charge direct of conspiracy, but that if they acted together in the matter that that made them conspirators, and I think beyond a peradventure of a doubt that that feature is in our favor. The law is well settled on that, that it need not be set out in the indictment as a conspiracy. The theory is that the general scheme—and this evidence presents facts which show clearly that they were operating under an agreement or understanding to rob fish-traps generally and that that was in operation at the time of this confession of the conspiracy, and on that ground we believe we perhaps have a right to introduce that as evidence. As I say, I am not absolutely sure I am right, but I want to present it to your Honor and present some authorities to sustain that view of it.

The COURT.—In order to keep the record straight, do I understand the confession you are talking about is the confession that was offered and received in evidence in the trial of Ernest Stage?

Mr. SMISER.—Yes, sir.

The COURT.—Made—

Mr. SMISER.—On the 18th of July.

The COURT.—Made on the 18th of July, 1919?

Mr. SMISER.—Yes, sir; in my office; and also the

confession that [230] he made to George Johnson prior to making one in my office.

The COURT.—How long prior?

Mr. SMISER.—Just the same evening, about half an hour earlier.

The COURT.—What I want to get clearly in the record is that it is confessions made by Ernest Stage on or about the 18th day of July?

Mr. SMISER.—Yes, sir, and sworn to on the 24th day of July. Taken down in shorthand on the 18th.

The COURT.—The point I want the record to show clearly is that it is confessions made after the offense was committed.

Mr. SMISER.—Yes, sir, that is the fact, but as we contend the conspiracy still existed until it was terminated by the defendants, and we will present some law on that feature of it, as to whether it was terminated or not.

The COURT.—I think the point I would like to hear argument on is this, to wit: The rule is that anything said or done by a co-conspirator in furtherance of the conspiracy is admissible, but whether or not a confession is in furtherance of the conspiracy is something I think is very doubtful and upon which I will hear argument.

(Whereupon the jury returned into the courtroom and were excused until Monday morning at 10 o'clock. Thereupon the Court heard argument of counsel on the matter of the admission of the

said confession, and thereafter court adjourned until Monday morning, at 10 o'clock.)

MORNING SESSION.

February 16, 1920, 10 A. M.

(In the absence of the jury.)

The COURT.—Gentlemen, I have considered the matter of this confession and I am satisfied that I should not admit it. It is not an act done in furtherance of the conspiracy—far from it. Three men are indicted jointly for an offense and demand separate trials,—one could absolutely imperil the life or liberty of another by an *ex parte* statement made out of court and without any chance for counsel to cross-examine him or [231] put him on the stand—he cannot be reached. I think it would be fatal error to admit it.

Mr. SMISER.—If your Honor please, for the sake of the record I would like to introduce Miss Liebhart before your Honor, and not before the jury, and formally tender her statement in regard to the fact that it was signed and sworn to by Ernest Stage—for the record and not for the jury.

The COURT.—Certainly.

Testimony of Ina S. Liebhart, for the Government.

INA S. LIEBHART, introduced by the Government, before the Court, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of Ina S. Liebhart.)

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name.

A. Ina S. Liebhart.

Q. What position do you occupy?

A. Clerk to the United States Attorney.

Q. Were you acting in that capacity during July, 1919? A. I was.

Q. I will ask you whether or not you took down a statement of Ernest Stage in shorthand and afterwards transcribed it into type. A. I did.

Q. Do you remember the date of that?

A. It was the 18th, I think, of July.

Q. I now show you a statement and ask you whether or not that is the statement you took down. A. Yes, that is the statement.

Q. How many pages were there in that signed statement? A. There are 17.

Q. I will ask you whether or not Ernest Stage acknowledged and swore to that statement before you.

A. He acknowledged it and swore to it; yes.
[232]

Q. What date was that?

A. That was the 29th. He objected to swearing to it at first, but afterwards he swore to it—no, on the 24th.

Q. What was the objection?

A. He thought you would not use it at the trial, I believe—I think that was it; you asked him to swear to it and he said he would rather not, and

(Testimony of Ina S. Liebhart.)

you said you would like to have him do it, and I think he said he thought you were not going to use it at the trial, and he said he would testify—then I think I went out of the room at that time, and later on you called me in and he swore to it.

Q. I will ask you whether or not you correctly took down in shorthand what purports to be in this deposition. A. Yes.

Q. Whether you correctly and in accordance with the way it was given and taken down in shorthand, transcribed it in type?

A. Yes, with the exception of several sentences that I discovered weren't in the statement, on comparing it on the back page.

Q. Do you remember what they were?

A. They were some sentences about the Weathers boys, whether they were here, and then you and Mr. Johnson started talking to him, and I didn't put that in.

Q. Your notes show what was said, do they?

A. Yes.

Q. I think you better get your notes and read them. (Witness produces notes.) Have you gotten your notes? A. I have; yes, sir.

Q. Now, will you please read what you referred to as being left out,—that you left out?

A. "Mr. Smiser: Well, now, we are going to take steps to break this thing up—we have got—

Q. Do you know where the Weathers boys are now? A. No. Q. Did you quit them? A. Yes, altogether. Q. They are out somewhere? A. They

(Testimony of Ina S. Liebhart.)

are out fishing. Mr. Smiser: Now, we have to keep charge of you on account of the condition of affairs. You will be [233] treated all right, and Mr. Johnson will have to take you under his arrest and I just want you to tell the truth; when you do tell, tell the truth; and we are going to see if we can't break up this trouble. Mr. Johnson here is a writ. (To the witness.) And I will talk with you again some time about it. You will have to be here. We want to get at the bottom—put a stop to this fish robbing. Mr. Johnson: Better explain to him, Mr. Smiser. Mr. Smiser: You are arrested now, charged with—on the smallest offense there because we have got to hold you, and I have just charged you with taking ten dollars' worth of fish from Funter Bay; just done that in order to hold you." That is all.

Q. That was said before or after the deposition?

A. Just afterwards—just at the end of it—I see no break here—just right along.

Mr. SMISER.—That is all.

Cross-examination.

(By Mr. HUBBARD.)

Q. That last statement you read, Miss Liebhart, when was that taken? A. The same time.

Q. You mean the day that the confession was made? A. Yes.

Q. Why didn't you put it in the confession?

A. Mr. Smiser said it was no part of the statement, and I just crossed it out at the time—I crossed it out here—didn't put it in. The question about the

(Testimony of Ina S. Liebhart.)

Wheathers boys I overlooked.

Q. You didn't leave that out intentionally?

A. No, not intentionally, because the statement began, "Well, now, we are going to take steps," and I thought it applied to this whole statement.

Q. He said at the time he had no further connection with the Weathers boys—he said they were out fishing somewhere?

A. "Q. Did you quit them? A. Yes, altogether.

Q. They are [234] out somewhere?

A. They are out fishing."

Mr. HUBBARD.—That is all.

(Witness excused.)

Mr. SMISER.—We will call Mr. Johnson.

The COURT.—I do not know what your object is. You cannot appeal your case and it does not do you any good to make your offer.

Mr. SMISER.—I think if the case were appealed this should be in the record.

The COURT.—I exclude the confession—how can you possibly benefit by it? You are just taking up time.

Mr. SMISER.—All right. I want to examine Mr. Johnson before I close the case.

(Whereupon the jury took their seats in the jury-box.)

Testimony of George L. Johnson, for the Government.

GEORGE L. JOHNSON, called as a witness on behalf of the Government, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name.

A. George L. Johnson.

Q. What official position do you hold?

A. Deputy United States Marshal.

Q. Were you holding this position during the months of June and July, 1919? A. Yes, sir.

Q. Did you make the arrest of Al Weathers?

A. Yes, sir.

Q. In this case? A. Yes, sir.

Q. I will ask you if you, during the months of May, June and July 1919, knew the defendant Al Weathers? A. Yes, sir. [235]

Q. Did you know Ike Weathers, his brother?

A. Yes, sir.

Q. Did you know Ernest Stage? A. Yes, sir.

Q. Do you know what they were doing during these months?

A. Well, they were operating the "Diana"—I seen them on the gas-boat "Diana."

Q. Had you known them for some time, Mr. Johnson?

A. Yes, I have known them for a year or more.

Q. Have you ever been on their boat?

(Testimony of George L. Johnson.)

A. Yes, sir.

Q. Know the boat? A. Yes, sir.

Q. Who was the captain of the boat—master?

A. Al Weathers.

Mr. SMISER.—That is all.

Cross-examination.

(By Mr. HUBBARD.)

Q. You say you knew the boat during what months? A. May, June and July.

Q. Do you know what they were doing with the boat in May? A. In May, no, sir.

Q. Where did you see them?

A. I saw them at Douglas and Juneau.

Q. You mean you saw the men or the boat, or all of them? A. The boat.

Q. You saw the boat there? A. Yes, sir.

Q. Do you know whether they were engaged in halibut fishing during that time?

A. I don't know; no, sir.

Q. During the month of May did you ever see Ike Weathers on that boat? A. Yes, sir. [236]

Q. About what time in May, as near as you can recall?

A. Well, I couldn't say the date. I rode across the channel with him one time in May.

Q. You rode across from here there?

A. No, from Douglas to Juneau.

Q. You say you cannot remember what part of May that was? A. No, sir.

Q. Wasn't it very early in the month of May?

A. I couldn't say.

(Testimony of George L. Johnson.)

Q. In the month of June have you any recollection of having seen Ike Weathers on the "Diana," in the month of June?

A. I seen him here in Juneau on it.

Q. What do you mean, you saw him at the dock on the boat? A. Yes, sir.

Q. But you didn't see him when it was out where he was engaged in fishing, or elsewhere?

A. No, I didn't see him out.

Q. Where was Ike Weathers—you say during the month of June you didn't see Ike Weathers on the "Diana" at any time except down here at the dock?

A. Yes, sir.

Q. Don't you know that during the month of June Ike Weathers was working on another boat entirely?

A. I don't know anything about that—I said I seen him on the boat here at the float.

Q. You don't know anything about that?

A. No, sir.

Q. He wasn't on the boat when you took the boat, was he? A. No, sir.

Q. Working on another boat at the time you arrested him, wasn't he?

A. He was on another boat at the time; yes, sir.

Q. You cannot swear to this jury that during the month of June at any time that Ike Weathers was on the "Diana"?

A. Why, I saw him on the "Diana" during the month of June. [237]

Q. That was down at the dock—the two boats might have been in town together and you might

(Testimony of George L. Johnson.)

have seen him on the boat, but I am talking about being on the boat in the capacity of a part of the crew—did you see Ike Weathers on the boat as a part of the crew?

A. I couldn't say whether he was a part of the crew or not, but he was on the boat.

Q. That is just technically—Mr. Smiser is wanting you to testify that during the months of May, June and July he was engaged in fishing on the "Diana"—that is the point of the evidence. Now, I want to have you state to the jury whether or not during the month of June you can swear that he was at any time on the "Diana" as a part of the crew, for any purpose?

A. I cannot say whether he was part of the crew. The time I rode across from Douglas to Juneau with him, Al was on the boat at that time.

Q. That was some time in May? A. Yes.

Q. You do not try to fix the date, however?

A. I cannot fix the date.

Q. Did I understand you to say it was early in the month of May or the latter part of May?

A. I don't remember whether it was in the early or late in May.

Q. Try to remember. Wasn't it, as a matter of fact, very early in the month of May?

A. I couldn't say.

Q. Did you see other men working on that boat during the months of May and June with Al Weathers—did you know a man by the name of Lynn Durgan? Yes, I know him.

(Testimony of George L. Johnson.)

Q. Do you remember to have seen him on the boat during the month of June? A. No, sir.

Q. You saw the boat during the month of June?

A. Yes, sir. [238]

Q. Where? A. City float.

Q. Did you see it at any other place in town than at the City float? A. No.

Q. Did you know the men you saw around there as part of the crew, or did you simply see them there?

A. I didn' know what their business was or anything about it—I saw them on the boat.

Q. Down at the dock—the fish boats all come in at the same place?

A. I presume near the same place.

Q. That is, the halibut boats?

Mr. SMISER.—I object—that is not cross-examination, to prove that other boats come into the dock at Juneau.

The COURT.—I think it is cross-examination.

Q. I asked you if all of the small fish boats do not land at the same dock down there?

A. Most of them land there.

Q. You desire the jury to understand when you say that you saw him on the boat in the month of June that he was working on the boat, or that he walked about the boat—

A. I don't know about that—I seen him on the boat—that is all I know.

Q. Do you know the crew of the “Diana” during the month of June? I am speaking now outside of Al Weathers—do you know who were the crew dur-

(Testimony of George L. Johnson.)

ing the month of June? A. No.

Q. Do you know during the month of May?

A. Well, as I stated before, I seen Al and Ike on the boat in May.

Q. Yes, I understand—that was some time in May you went across the bay with them to Douglas on the boat, and Al was there on it at that time?

A. Yes, sir.

Q. Now, during the month of July,—when did you see Ike Weathers and Al Weathers on the boat during the month of July? [239]

A. I seen Al on the boat in the month of July.

Q. At what time? A. The 17th of July.

Q. The 17th of July you saw Al Weathers on the “Diana”? A. Yes, sir.

Q. Was Ike Weathers there?

A. I didn’t see him.

Q. Was anybody with Al Weathers at the time?

A. There was somebody with him, but I couldn’t say who it was.

Q. You say you don’t know who it was?

A. No, sir.

Mr. HUBBARD.—That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. Did you see the party so that you could recognize him and know him, that was with Al, or did you just see that there was another man there?

A. There was another man got off the boat and I couldn’t tell just who he was, but he got off the boat and went on the scow.

(Testimony of George L. Johnson.)

Q. What were they doing at that time?

A. They had come in with a load of fish.

Q. Come in where?

A. Where Bennett had his scow out there.

Q. Where was that?

A. It was just this side of Swanson's Harbor, in between one or two little islands—small islands.

Q. What time of the day was it?

A. Between 4 and 5 o'clock in the morning.

Q. Of the 17th of July? A. Yes, sir.

Q. What boat was Al Weathers using at that time?

A. The "Diana."

Q. And you saw another man but couldn't recognize who it was? A. Yes, sir. [240]

Q. Where were the fish that they had,—did they have the fish on the "Diana"?

A. They came into the float there and unloaded fish—I saw them unloading them.

Q. And unloaded them on to Bennett's scow?

A. Yes, sir.

Q. Was Bennett there at that time?

A. Yes, sir.

Mr. HUBBARD.—If the Court please, this is going a long ways in this examination.

The COURT.—Why didn't you object to it?

Mr. HUBBARD.—I thought counsel would only ask a question or two, and we didn't want to be technical about the matter.

Mr. SMISER.—That is all.

(Witness excused.)

Mr. SMISER.—We rest.

PLAINTIFF RESTS.

(Whereupon court adjourned until 2 o'clock P. M.)

AFTERNOON SESSION.

February 16, 1920, 2 P. M.

Mr. HUBBARD.—If the Court please, we submit this motion on the striking out of some testimony in the case: Comes the defendant and respectfully moves the Court to strike from the record herein the testimony of the following named witnesses, to wit:

The testimony of John Hansen and Homer Lee for the reason that neither of said two witnesses identified either the boat "Diana" or the defendant at any time testified to by them or either of them.

All the testimony of Dr. Borland for the reason that said testimony has no bearing upon any of the issues in this case; [241] the same refers to incidents occurring on the 10th day of July, 1919, long after the commission of the offense for which the defendant is now on trial, and does not tend to establish the commission thereof.

That portion of the testimony of Alfred Knutson referring to incidents happening on the 10th day of July, 1919, for the reason that said testimony concerns incidents long after the commission of the offense for which defendant is being tried, and such testimony does not tend to establish the commission of the offense charged in the indictment.

The testimony of Carl Peterson, for the reason that said testimony has not probative force, and does not identify either the defendant or the boat "Diana."

All the testimony given on behalf of the plaintiff with reference to the commission of offenses other than on the 8th day of July, for which latter offense the defendant is now on trial, for the reason that all such evidence and testimony is incompetent and irrelevant and does not tend to establish any of the constitutive elements of the offense charged; that there is no casual or logical or natural connection between the act for which the defendant is now being tried and the acts testified to by said witnesses and attempted to be established by such evidence; that the admission of such evidence compels the defendant to meet charges of which the indictment gives him no notice or information; that it raises a variety of issues and tends to confuse and to divert the attention of the jury from the charge upon which the defendant is being tried and the same does not tend to establish any element of the offense charged.

The COURT.—I think the testimony of Peterson will have to be stricken. I think it would be safer to exclude it for this reason if for no other—the Government asks that it be admitted because other witnesses testified that the “Diana” went in that direction about 5 o’clock; and Peterson testifies that about 5 o’clock a boat appeared,—take note particularly [242] of the word about—about 5 o’clock a boat did appear there and shots were fired. He testified that only one boat appeared there, but the other witnesses did not testify that only one boat passed the point. As Mr. Hubbard said, there might have been two or three boats pass that point that the witnesses never saw—they are testifying as to the

“Diana”—they identified the “Diana,” and they testified that the “Diana” went by there, but they did not testify that no other boat went by there. I think I will grant this motion so far as the testimony of Carl Peterson is concerned; and deny it as to the other witnesses.

Mr. HUBBARD.—We have not named Herman Mitts specially in the motion, to strike out the testimony of the incidents, other than as that of the 8th refers to his testimony.

The COURT.—The motion is too general, in the first place; and in the second place, it is not well taken. Specify the witnesses whose testimony you want stricken out, which you have done, and give me something to go on. I cannot ransack the record to see what every witness has testified to with the view of finding something to strike out. I think the motion is well taken as to Carl Peterson—I have had the testimony read to me.

Mr. HUBBARD.—The Court does not desire to hear anything in reference to Hanson and Lee?

The COURT.—No; I think Hanson is particularly well connected, and Lee also. I may strike Peterson’s testimony out in my instructions to the jury. You need not meet that.

(Whereupon the jury returned to the jury-box.)

DEFENSE.

Testimony of Cash Cole, for Defendant.

CASH COLE, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. Will you state your name to the jury?

A. Cash Cole.

Q. Where do you live? A. Juneau.

Q. How long have you resided here?

A. About 22 years.

Q. Engaged in the transportation business, are you? A. Yes, sir.

Q. Do you know the defendant here, Al Weathers?

A. Yes, sir.

Q. How long have you known him?

A. Oh, just in a casual way for about—less than a year.

Q. Did you see him on the 4th of July, 1919?

A. I did.

Q. You may state where is was and about what time in the day.

A. I saw him two or three different times during the day on the 4th, at the barn,—down at the barn.

Q. At your barn where you keep your transportation equipment? A. Yes, stock.

Q. What was the last time—the latest time he was at your place on that occasion?

A. I think it was in the evening.

(Testimony of Cash Cole.)

Q. Can you fix about the time?

A. Well, it was after the hose races, I know. I had gone down there to bed the horses down, and he had been in there then—he had been in once or twice before and wanted to know if somebody had left some stuff in there,—some store was going to [244] leave some stuff in there for him,—that was the first time I had ever spoken to him.

Q. Do you know whether or not the stuff he was expecting came to your place?

A. It didn't come while I was there.

Q. You say this was along in the evening; was it, after dinner or before dinner?

A. It was after the hose races on the 4th of July—somewhere between 7 and 8 o'clock.

Q. In the evening or night of the 4th?

A. Night of the 4th.

Mr. HUBBARD.—That is all.

Cross-examination.

(By Mr. SMISER.)

Q. Do you know that this stuff was to be delivered to his boat there?

A. No; he just asked me if somebody had left some stuff there for him—he said, I think, it was groceries.

Q. Some supplies for his boat?

A. Some supplies.

Q. For his boat?

A. He didn't say—he just asked me if some supplies had been left there.

Q. Did you know where his boat was at that time?

(Testimony of Cash Cole.)

A. No.

Mr. SMISER.—That is all.

Q. (By Mr. HUBBARD.) Where is your stable, or transportation place, barn, with reference to the cannery of the Northern—

A. Right next door.

Mr. HUBBARD.—Right next door to it. That is all.

(Witness excused.) [245]

Testimony of C. F. McNutt, for Defendant.

C. F. McNUTT, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. What is your name? A. C. F. McNutt.

Q. What is your business here? A. Teamster.

Q. With whom are you working?

A. Cash Cole.

Q. You are working for Mr. Cole—or are you a partner of his? A. I am working for Mr. Cole.

Q. Were you working under him on the 4th of July last year, 1919? A. I was.

Q. Were you in and about his place, his stable, during the day? A. Yes, sir, most of the day.

Q. Are you acquainted with the defendant here, Al Weathers? A. I am.

Q. I will ask you to state whether or not you saw Al Weathers there at the barn on the 4th of July.

(Testimony of C. F. McNutt.)

A. At least twice and maybe three times that I can recall now.

Q. Was there anyone with him?

A. I saw his brother with him at one time, and another time I believe it was Mr. Bennett with him.

Q. Now, what was the latest time on the 4th—can you fix the last time he was there on that occasion?

A. The last time to my knowledge was some time after the fire truck races on the 4th of July—that must have been around 7 o'clock—I remember it was in the evening.

Q. Did the defendant here come to your barn some time about 7 o'clock, or half-past seven—or after seven?

A. He was there after that time, yes, sir. [246]

Q. Did you have any conversation with him about anything—hear him say anything?

A. Why, yes.

Q. Do you know what his purpose was in coming there?

A. I believe he was coming there looking for some provisions or supplies for his boat that were supposed to come down there.

Q. Where is this place located with reference to the Northern Packing Company?

A. Just this side, on the same side of the street.

Q. On the same side of the street and next door to it? A. Yes, sir.

Mr. HUBBARD.—That is all.

(Testimony of C. F. McNutt.)

Cross-examination.

(By Mr. SMISER.)

Q. Did you know what boat his boat was?

A. How is that?

Q. Did you know Al Weathers' boat?

A. Yes, sir.

Q. What was it? A. The "Diana."

Q. Was he operating the "Diana" at that time—master of it?

A. To the best of my knowledge he was, yes.

Q. Did you see the boat there?

A. Well, now, as to that, I couldn't swear I was out on the face of the dock that day.

Q. But these goods were supposed to be sent there to be delivered to his boat there at that place?

A. That was my understanding; yes, sir.

Q. You say at one time Mr. Bennett was with him?

A. That was along in the afternoon. Whether Mr. Bennett came in the barn or not I don't know, but I know that I saw him in the doorway—it is a big double door.

Q. That was the 4th?

A. Yes, sir; some time in the afternoon of the 4th. What time it [247] was I couldn't say.

Q. He was with Al Weathers at the time?

A. Yes.

Q. You know Mr. Bennett well?

A. Yes, I have known him for the last four or five years.

Mr. SMISER.—That is all.

(Witness excused.)

Testimony of O. E. Bennett, for Defendant.

O. E. BENNETT, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. You may state your name. A. O. E. Bennett.

Q. Where do you reside? A. In Douglas.

Q. How long have you lived there?

A. A matter of four years.

Q. Have you lived in Juneau any part of the time, or has your residence been over in Douglas all the time?

A. My residence has been in Douglas practically all the time.

Q. Are you acquainted with the defendant here, Al Weathers? A. I am; yes, sir.

Q. How long have you known him?

A. A matter of four or five years.

Q. Did you know him during the fishing season last year, say, from May to July—May, June and July? A. I did.

Q. Did you see him in and about Juneau and Douglas during that period? A. June and July?

Q. Well, May, June and July—during what you might call the fishing season last year? [248]

A. Yes, sir, the early season I saw him here.

Q. Do you know what he was fishing in the early part of the season? A. Halibut.

(Testimony of O. E. Bennett.)

Q. Do you know where he fitted out his boat for halibut fishing?

Mr. SMISER.—I object to that as immaterial, as to where he fitted out his boat for halibut fishing.

The COURT.—I cannot tell yet whether it is immaterial or not—let him answer.

Q. Did you state that you knew what the boat was doing during the month of May, Mr. Bennett?

A. Yes, sir.

Q. What was it engaged in during the month of May? A. In halibut fishing.

Q. What during the month of June, if you know?

A. Halibut fishing, I believe.

Q. What, if anything, in July?

A. He was engaged in fishing salmon in July, I know.

Q. Now, where were you on or about the 4th day of last year? A. At Whitestone Harbor.

Q. How long had you been there, Mr. Bennett?

A. I think I went out there some time the latter part of June—the last week in June.

Q. Where is Whitestone Harbor with reference to what is called Admiralty Cove, the place testified to here by the witnesses—where is Admiralty Cove, do you know?

A. I am not very familiar with Southeastern Alaskan waters. It is some 20 or 30 miles, I think, from Admiralty Island where I was located.

Mr. HUBBARD.—If the Court please, we will offer in evidence this chart and ask the witness some questions.

(Testimony of O. E. Bennett.)

Mr. SMISER.—No objection.

(Whereupon said chart was received in evidence and marked Defendant's Exhibit No. 1.)

Q. Look at this navigation chart, Mr. Bennett, and point out about [249] where Whitestone Harbor is on that map, and you may make a mark of some kind on it to indicate it.

A. All I know about Whitestone Harbor is it is situated on Chichagoff Island.

Q. What is this point here?

A. That is Pleasant Island there.

Q. No, I am not speaking of the island; I am talking about the water—what is this water here?

A. Icy Straits.

Q. And this water running northward here?

A. Lynn Canal.

Q. What is this up here where the large mark is?

A. Port Frederick.

Q. Do you know where the Hoonah cannery is?

A. Yes, sir.

Q. Where is Whitestone, if you can locate it on there?

A. Whitestone is right in here—it is a little bay in here.

Q. That is Whitestone Harbor in there?

A. Yes, sir.

Q. What is the distance from Whitestone Harbor to Juneau on the course of the small boats?

A. I should judge 60 or 65 miles.

Q. Do they all take the same course in going from Juneau to Whitestone?

(Testimony of O. E. Bennett.)

A. Either around Douglas Island or over the bar.

Q. Can all boats go over the bar?

A. The larger boats do not as a rule.

Q. The larger boats do not as a rule, but some of the smaller boats can get over the bar?

A. Yes, sir.

Q. How much does that shorten the distance?

A. About two hours.

Q. You say you don't know where Admiralty Cove is on this chart?

A. No, I am not familiar with that location.
[250]

Q. You say you went to Whitestone along the latter part of June? A. Yes.

Q. Where were you on the 4th of July?

A. At Whitestone Harbor.

Q. Who, if anyone, was there with you at that time, Mr. Bennett? A. On the 4th?

Q. Yes.

A. There was no one on the 4th.

Q. Had you seen the defendant at Whitestone Harbor just prior to the 4th of July?

A. Yes, sir.

Q. State when. A. I saw him on the 3d.

Q. Where did he go on the 3d of July, if you know? A. Into Juneau.

Q. How, and on what boat, if you remember?

A. On the cannery tender "Agram" belonging to the Northern Packing Company.

Q. Belonging to what company?

A. Belonging to the Northern Packing Company.

(Testimony of O. E. Bennett.)

Q. Where did this boat start from to Juneau on that occasion? A. Whitestone Harbor.

Q. What did you have there in Whitestone Harbor, if anything—have a dock, or what?

A. I had a barge or buying scow.

Q. You had a scow there? A. Yes, sir.

Q. Did the “Agram” when she was in Whitestone Harbor tie up to your scow, or did she have another anchorage place in there?

A. Nearly all of those boats tied up to my scow.

Q. The “Agram” was there on the 3d?

A. Yes, sir.

Q. And when it left there for Juneau who came in or left on that boat for Juneau? [251]

A. The crew of the “Diana” went in.

Q. Who were they?

A. They were three—the two Weathers boys and a boy by the name of Stage.

Q. Ernest Stage? A. Yes, sir.

Q. Do you remember about what time they started in on the 3d?

A. I do not—it was some time in the afternoon of the 3d—afternoon or evening of the 3d.

Q. Where was the boat called the “Diana” at that time? A. It was lying at my float.

Q. You say the defendant here left there on the “Agram”? A. Yes, sir.

Q. When did you next see him, Mr. Bennett?

A. In the early morning hours of the 5th of July, about 5 or 6 o'clock, I should judge—4 or 5 o'clock.

Q. I will ask you to state whether or not he was

(Testimony of O. E. Bennett.)

at Whitestone Harbor during the 4th of July?

A. He was not there during the day of the 4th; no, sir.

Q. Where was the boat "Diana" on the 4th?

A. Tied up at my float.

Q. You said the next time you saw him was the morning of the 5th of July? A. Yes, sir.

Q. 10 or 11 o'clock?

A. 4 or 5 o'clock, when the cannery tender returned.

Q. Where was the boat "Diana" at that time?

A. Lying at the float.

Q. How did he come there on the morning of the 5th? A. On the cannery tender "Agram."

Q. After the cannery tender "Agram" came in there, what, if anything, did it do, if you know—the "Agram," on that day? A. On the 5th?

Q. Yes. [252]

A. Oh, it laid there for a while, and went out looking for fish or seine boats,—I didn't have any fish to sell at that time,—I don't think I had any fish at all on the boat—everybody was in town.

Q. The "Agram" stayed there a while and then went out? A. Yes, sir.

Q. Did it return to Whitestone Harbor again that day or the next day?

A. I think it returned on the 6th.

Q. Then what did it do, if you know?

A. The cannery tender then went into town on the evening of the 6th.

Q. Who left there on the cannery tender at that time, if you have any recollection of it?

(Testimony of O. E. Bennett.)

A. I remember the defendant left on the evening of the 6th.

Q. Who else was there with you at that time after the "Agram" left—who was with you, if anybody?

A. The younger Weathers was there on the evening of the 6th.

Q. Where was the boat "Diana"?

A. At the float.

Q. During the 4th and 5th had the "Diana" been away from the float at your place? A. No, sir.

Q. You say the defendant left there on the 6th, on the "Agram"? A. Yes, sir.

Q. When did you next see him after that?

A. On the return of the cannery tender "Agram" on the morning of the 7th.

Q. On the morning of the 7th? A. Yes, sir.

Q. You say it left there the 6th?

A. Left there the evening of the 6th, or afternoon sometime, of the 6th, and returned the following morning at 4, 5 or 6 o'clock—somewhere around there—that is the time she usually arrived. [253]

Q. Think about that, Mr. Bennett. You say she left the evening of the 6th, and came back on the morning of the 7th?

A. No, sir; she came in on the evening of the 6th.

Q. When did she arrive back to Whitestone Harbor?

A. She returned there the morning of the 7th—if I remember correctly it was the 7th, about 4 or 5 o'clock—it was the first trip after the 4th.

Q. Do you know why the defendant came into

(Testimony of O. E. Bennett.)

town at that time? A. Yes, sir.

Q. What was the reason?

A. I was unable to leave the float, and I expected my wife and her friend from Seattle at that time, and she was due to arrive here about the 7th or 8th.

Q. Did the defendant return to Whitestone Harbor after he came in on that trip?

A. On the evening of the 6th?

Q. Yes. You say he came in on the evening of the 6th, and you say he returned to Whitestone Harbor?

A. He returned to Whitestone Harbor the following evening—leaving here the following evening, arriving out there the morning of the 8th about 6 or 7 or 5 or 6—somewhere in the early morning hours.

Q. Who was with him, if anybody, when he got there at that time?

A. He was alone. His brother was still there.

Q. His brother was where—at Whitestone—while he was in town?

A. Yes, sir, his brother remained there until the morning of the 8th, when Mr. Weathers got back.

Q. What time on the 8th, if at all, did the “Diana,” the boat you have been testifying about—what time did it leave Whitestone Harbor?

A. I couldn’t testify to that—I think it left some time before noon—in the morning.

Q. Who was on the boat at that time, if you know?

A. I think just him and his brother. [254]

(Testimony of O. E. Bennett.)

Q. I will ask you where the boat "Diana" was between 4 and 5 o'clock on the morning of the 8th?

A. The boat "Diana," on the morning of the 8th, was lying at my float.

Q. Where was Ike Weathers at that time?

A. He was there.

Q. He was aboard the "Diana"? A. Yes, sir.

Q. And Al Weathers, you say, the defendant here, arrived out there on the "Agram" on the morning of the 8th, about what time?

A. About 4 or 5 or 6 o'clock—the early morning hours—about the time the cannery tender usually arrived.

Mr. HUBBARD.—That is all.

Cross-examination.

(By Mr. SMISER.)

Q. You say that Al Weathers left the cannery on the 6th? A. No, sir.

Q. Left Whitestone Harbor on the 6th?

A. Yes, sir.

Q. And came to Juneau? A. Yes, sir.

Q. What time did he leave that day?

A. I couldn't tell you, sir—some time in the afternoon or evening of the 6th, when the cannery tender came to town with him aboard.

Q. And you say he returned from town on the morning of the 7th?

A. No, the morning of the 8th.

Q. You first said the morning of the 7th, didn't you? A. No, sir, the morning of the 8th.

Q. You repeated it several times, didn't you, in

(Testimony of O. E. Bennett.)

answer to Mr. Hubbard's question, that he got back the morning of the 7th?

A. He couldn't get back there the morning of the 7th and leave there the evening of the 6th.

Q. I know, but I am asking you didn't you state that he came [255] back on the morning of the 7th, and after Mr. Hubbard asked you some other questions, didn't you change it to the morning of the 8th?

A. No; if I mentioned the morning of the 7th I was mistaken, because he couldn't get back there on the morning of the 7th.

Q. You say he came to town that morning for the purpose of meeting your wife?

A. My wife and her friend, who were due to arrive here about the 7th or 8th.

Q. That friend was a lady who was with your wife? A. Yes, sir.

Q. And they were due to arrive here about the 7th or 8th? A. Yes, sir.

Q. Why was it necessary for him to meet them?

A. I wanted some friend of mine to meet them so my wife could get out on the cannery tender.

Q. Did she get out?

A. She didn't arrive on that steamer, as I expected—I had a wire or a letter that she would not arrive until the following steamer. That is the reason that he came back on the 7th.

Q. And he left on the evening of the 7th and he arrived at Whitestone about 8 or 9 o'clock the morning of the 8th?

(Testimony of O. E. Bennett.)

A. No, I think it was earlier than that.

Q. Didn't you state a little while ago it was 8 or 9 o'clock?

A. I don't think so, because the cannery tender usually got there in the early hours.

Q. But you first said it got there about 7 or 8 o'clock, didn't you?

A. Not that I remember of—if I did I was mistaken in the hours, because it was bound to arrive there earlier than that—she usually left here about 10 or 11 o'clock, and it is 7 or 8 hours running time.

Q. Now, you say it was about 7 or 8 o'clock—

A. No, sir, I didn't say that. [256]

Q. You didn't say that a while ago?

A. Not that I remember of, because I know it was much earlier—4 or 5 o'clock—when she usually arrived there.

Q. That is what you testified in the Ernest Stage case, that this boat got there about 4 or 5 o'clock.

A. The cannery tender usually arrived there about 4 or 5 o'clock in the morning.

Q. Now, I will ask you if you didn't state in your testimony in the Stage case, that Al Weathers returned to Whitestone Harbor the morning of the 8th of the month about 4 o'clock in the morning?

A. I think I did—that is the same time I state that he returned now—4 or 5 o'clock—somewhere along those hours—might have been six o'clock but not later than that.

Q. Now, did he remain at Whitestone Harbor the day of the 8th?

(Testimony of O. E. Bennett.)

A. That I don't remember—the boats were coming and going all the time—I don't remember what time he left there after that. Naturally I would know the time that he returned because I had news and letters from my wife. He returned the morning of the 8th, and she had not arrived yet.

Q. Why didn't Weathers wait for her if he came here to meet her—she arrived on the 9th, didn't she? A. The 9th or 10th, I believe she arrived.

Q. Why didn't Weathers wait here for her until the 8th?

A. I don't know Mr. Weathers' business—I suppose he had his business to attend to.

Q. You sent him on that business, didn't you?

A. I never sent him particularly, only he was coming to town.

Q. Didn't you testify that that is what made him come, that you got him to come to meet your wife—didn't you testify that was the purpose of his coming? A. Yes, sir.

Q. If she came in on the 9th why didn't he wait and meet her?

A. He didn't know what time she would arrive. He had no letter from her—he had letters for me, but he didn't open them [257] to find out what time she was coming, so naturally he didn't know.

Q. When she didn't arrive on the morning of the 8th he went back?

A. He returned on the morning of the 8th, with letters for me.

(Testimony of O. E. Bennett.)

Q. With letters for you?

A. From my wife, yes.

Q. Now, who else was at Whitestone Harbor on the 4th of July besides yourself? A. Nobody.

Q. Weren't you in town that day? A. No, sir.

Q. Didn't you go down with Al Weathers down here to Cash Cole's in the afternoon to see about the delivery of some goods there?

A. On the 4th?

Q. Yes. A. Most emphatically not.

Q. You didn't? A. No, sir.

Q. You are sure of that?

A. I never left the Harbor.

Q. Now, who else was at Whitestone Harbor on the 4th besides you and Ike Weathers?

A. I don't know of any other boats being in there at that time—there might have been one or two boats laying there—I know the younger brother was there while the elder came to town.

Q. Was there anybody else at all there during that time during the absence of Al Weathers, besides yourself and Ike Weathers?

A. I don't remember of anybody else being there—there may have been another boat or two there—I wouldn't say.

Q. What time did the "Diana" leave Whitestone Harbor on the 8th?

A. I couldn't tell you that—I know the elder brother returned on the morning of the 8th on the cannery tender, and as to what future movements they made after that I don't know, because I was

(Testimony of O. E. Bennett.)

interested in my wife's letter—he told me she had not arrived, and what time they left I do not know.
[258]

Q. She arrived on the boat "Jefferson," didn't she? A. I think it was the "Jefferson."

Q. You say you had been up in Icy Straits since about the first of June?

A. No, sir; since the last week in June.

Q. You were buying fish? A. Yes, sir.

Q. Were you buying them on commission?

A. Yes, sir.

Q. And furnishing the fish to the Northern Packing Company? A. Yes, sir.

Q. Did you know the boat "Diana" at that time?

A. Yes, sir, I knew the boat "Diana."

Q. Did you know the "Thalia"?

A. Yes, sir.

Q. Did you know the "Juneau"?

A. Why, I saw the "Juneau," I believe, once at Whitestone Harbor.

Q. Did you know the "May"?

A. No, I don't think I knew the "May"—I have seen the "May."

Q. Did you know the "Pilgrim"?

A. I have seen the "Pilgrim."

Q. What boats did you buy fish from out there?

A. All the seine boats that had any fish to sell.

Q. Well, what are the names of them?

A. I never kept any record of the boats.

Q. Can't you name any of the boats you bought fish from?

(Testimony of O. E. Bennett.)

A. Yes, I can name a number I bought fish from. I bought fish from the "Henrietta," the "Ruth," "Ocean Wave," and other boats with only numbers on that I don't remember their names.

Q. Buy any from the "Diana"?

A. I bought fish from the "Diana."

Q. Why didn't you name that?

A. I can mention the "Diana"—also bought fish from the "Thalia."

Q. Why do you hold those back until the last?
[259]

A. I didn't intend to hold them back—never gave them a thought. You asked me to give you the names and I gave them to you.

Q. I will ask you, Mr. Bennett, if you didn't go out there for the express purpose of buying fish that pirate boats were stealing out of traps?

A. No.

Mr. HUBBARD.—We object to that, if the Court please.

The COURT.—Overruled.

Q. I will ask you if you didn't buy from all of the boats that were commonly called pirate boats—if you didn't buy all the fish that they brought in?

A. How would I know that they were pirate boats?

Q. Don't ask me questions—you answer my questions. A. I didn't know they were pirate boats.

Q. You didn't know that they were pirate boats?

A. I did not.

(Testimony of O. E. Bennett.)

Q. I will ask you if you didn't buy from the "Thalia"?

A. I bought from the "Thalia," yes, sir.

Q. The "Pilgrim"? A. Yes, sir.

Q. The "Diana"? A. Yes, sir.

Q. Didn't you, during all of the time the alleged fish piracy was going on, hear of these reports about fish being stolen out of traps?

A. No, sir; I think I would be the last one to hear about it.

Q. You would be the last man—the one who was getting the proceeds from it would be the last one to hear of it?

A. I suppose I would if that was going on.

Q. Suppose you would if you had a stand in with them.

Mr. HUBBARD.—If the Court please, I object to that—there is no evidence here that he had a stand in with them.

The COURT.—Objection overruled.

Q. Didn't you hear about those boats stealing fish?

A. No, sir; I never made that my business. [260]

Q. Never heard anything about it. Did you hear anything about them shooting up these traps?

A. No, sir, not until I came to town.

Q. That was after Al Weathers was arrested?

A. Well, I heard about it—I think it was when the "Dixie" arrived, or something of that sort.

A. I will ask you if you didn't suspect you were going to be arrested for receiving stolen goods, Mr. Bennett? A. Not in the least.

(Testimony of O. E. Bennett.)

Mr. HUBBARD.—I object to that, if the Court please.

Q. I will ask you if you didn't say, in substance, to Mr. Johnson, when he came out there to arrest some fish pirates, if he had any charge against you?

A. I don't remember—I don't recall any such conversation with Mr. Johnson.

Q. You don't deny having it?

A. I don't recall it—don't remember any such conversation.

Q. I will ask you if you didn't pull up your scow pretty soon after the Admiralty Cove shooting occurrence, on the 8th of July, and move your scow up into a little remote cove in Swanson's Harbor?

A. I did.

Q. That is sometimes called Pirate Cove?

Mr. HUBBARD.—I object to that as not cross-examination. It is a matter that was ruled out on the Government's case—why should we go into it now?

The COURT.—The trouble is, the witness answers before your objection gets in—he has answered the question.

Mr. HUBBARD.—Then I move to strike it out, and the witness will please not answer so promptly. I move to strike out the answer and the question both, if the Court please.

The COURT.—Motion denied.

Q. I will ask you if you didn't move your scow to Pirate Cove because you thought you would have a little more seclusion there in getting the fish un-

(Testimony of O. E. Bennett.)

loaded out of these fish thieves' [261] boats into your scow than you could at Whitestone Harbor—wasn't that the purpose of your moving up there?

A. No, sir.

Mr. HUBBARD.—We object to that; the defendant is in no way concerned in what the man moved his scow up there for, or anything else.

The COURT.—The witness has answered no, and there is nothing before the Court. Proceed.

Q. Now, Mr. Bennett, I will ask you if you didn't abandon the business as soon as Al Weathers there was arrested and put in jail?

Mr. HUBBARD.—I object to that as immaterial so far as this defendant is concerned.

The COURT.—The objection is overruled.

A. Immediately after he was arrested; yes, sir.

Q. And since that time you have put in your time very largely in walking the streets and making a defense for Al. Weathers and Ernest Stage and Ike Weathers, haven't you?

A. Yes, sir, because I knew they could not be guilty of that charge.

Q. I know—I am not asking you for your reasons—I am asking you what you did. Wasn't that interest you exhibited on behalf of these defendants mainly exhibited because you knew you yourself were guilty of receiving stolen goods, and you thought if you could break down the prosecution it would break down any prosecution that might be pending against you—isn't that what moved you in being so active on behalf of the Weathers boys?

(Testimony of O. E. Bennett.)

Mr. HUBBARD.—I object to that question, if the Court please.

The COURT.—Objection overruled.

A. State that question again.

(Whereupon said question was read to the witness.)

A. No, sir; most emphatically no.

Mr. SMISER.—That is all. [262]

Q. (By Mr. HUBBARD.) You mentioned in your testimony that your wife had a lady friend coming with her—I will ask you to state whether or not the party that was coming with your wife was a personal friend of Mr. Weathers here, the defendant? A. A personal friend; yes, sir.

Mr. HUBBARD.—That is all.

(Witness excused.)

Testimony of H. G. Byers, for Defendant.

H. G. BYERS, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. State your name. A. H. G. Byers.

Q. Where do you live? A. Juneau.

Q. How long have you lived here?

A. Fifteen years.

Q. Where were you last year, during the fishing season of 1919—were you here in town?

(Testimony of H. G. Byers.)

A. Part of the time, and part of the time I was out.

Q. Were you engaged in fishing, yourself, Mr. Byers? A. Yes; I chartered a boat.

Q. Were you in Juneau on or about the 4th of July? A. Yes, sir.

Q. Do you remember to have seen the defendant here in Juneau at that time? A. Yes, sir.

Q. I will ask you if you remember to have seen him the 7th of the month, July.

A. I don't remember the date—it was somewhere between the 5th and the 9th that I seen him, but I couldn't tell the date. [263]

Q. Where was it that you saw him at that time—you say it was somewhere between the 5th and 9th but you cannot fix the exact date—where did you see him, Mr. Byers?

A. I was on the gas-boat "Agram," Mr. Estes' boat, and he was on the same boat—went from Juneau to Douglas.

Q. You say you cannot *dix* the exact date?

A. No, sir; I cannot fix the exact date.

Q. What was the purpose of this trap from Juneau over to Douglas?

A. I was working for Mr. Estes at the time, and my brother had a seine boat over there on the float, and he wanted to take it off—he was also working for Mr. Estes, and he sent us over to take this boat off the float.

Q. You state that when you went over to take the boat off the float that the defendant went with you?

(Testimony of H. G. Byers.)

A. Yes, sir.

Q. What was his object in going?

A. He went to help us.

Q. He went there to assist you in floating the boat? A. Yes, sir.

Q. How long were you over there?

A. Why, about 4 hours altogether.

Q. What time of the day of the 7th did you say that was?

Mr. SMISER.—He didn't say it was the 7th, if the Court please.

Mr. HUBBARD.—That is right, he didn't say the 7th.

Q. What time in the day was it when you went over there? A. We left Juneau about 11:30.

Q. That would be in the morning?

A. In the morning; yes.

Q. When did you get through over there?

A. I should judge it was very nearly 3 o'clock in the afternoon.

Q. Then what did you do after you floated this boat? A. We came back to Juneau.

Q. Where did you come to?

A. To the cannery, down here. [264]

Q. Northern Packing Company?

A. Yes, Northern Packing Company.

Q. The defendant was with you at that time?

A. Yes.

Q. Now, were you at the cannery that evening after dinner, or at any time later in the evening?

A. No, sir.

(Testimony of H. G. Byers.)

Q. Have you any knowledge of the time that the cannery boat left Juneau that night, if she did leave?

A. He was supposed to have left that night but I don't know whether he did or not—I left the next morning.

Q. You haven't any direct knowledge yourself as to just when the cannery boat did get out?

A. No, sir.

Mr. HUBBARD.—That is all.

Cross-examination.

(By Mr. SMISER.)

Q. What boat did you leave on?

A. I have my own boat—the “Electo.”

Q. And you are not certain as to what these dates are that you have been testifying to—might be anywhere from the 7th to the 9th?

A. Yes, somewhere along there—I remember I was in on the 4th—and I couldn't say the exact date—kept no log.

Q. What cannery were you working for, Mr. Byers?

A. At that time I was employed by the Northern Packing Company, Mr. Estes.

Q. What were you doing for them?

A. I was buying fish, with my own boat.

Q. Where from?

A. Seymour Canal down to Frederick Sound.

Q. You were buying fish out there?

A. Yes, sir—we had seiners out there working, and I was attending to the seiners. [265]

(Testimony of H. G. Byers.)

Q. Do you remember whether the steamboat "Jefferson" came in that day?

A. I don't remember.

Q. Do you know whether the Seattle came in?

A. I don't remember anything about it.

Q. And the last you saw of the defendant Al Weathers was about 3 o'clock in the evening?

A. Yes, sir.

Q. You couldn't state that he was going back out to where Bennett had a scow?

A. I don't know where they were going—he didn't say—didn't tell me where he was going.

Q. Who was with you?

A. Mr. Hanson was captain of the boat, and there was another young fellow, I don't know his name.

Q. Do you know Ernest Stage? A. Yes, sir.

Q. Was he there? A. No.

Q. And that is as close as you can come to that date?

A. Yes, sir, that is as close as I can come to the date.

Q. Somewhere between the 5th and the 9th?

A. Yes, somewhere between the 5th and the 9th.

Q. Might have been on the 6th?

A. Somewhere along there—I don't exactly know—never kept no log or anything.

Mr. SMISER.—That is all.

(Witness excused.) [266]

Testimony of W. A. Estes, for Defendant.

W. A. ESTES, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. You may state your name to the jury.

A. W. A. Estes.

Q. What is your business, Mr. Estes?

A. Canning fish.

Q. Where? A. In Juneau.

Q. How long have you been canning fish here?

A. Two seasons.

Q. You say you have a cannery here in town?

A. A small cannery, yes, sir.

Q. Are you acquainted with the defendant here, Al Weathers? A. Yes, sir.

Q. How long have you known him?

A. Both of these seasons—about a year and a half.

Q. Were you in town on or about the 4th of July?

A. Yes, sir.

Q. Were you operating your cannery at that time, in Juneau—working? A. Yes, a little.

Q. I will ask you if you remember to have seen the defendant here in town on the 4th of July?

A. Yes, sir.

Q. Do you remember whether or not he left town that evening—if you have any knowledge of it?

A. Yes, he went away in the evening.

(Testimony of W. A. Estes.)

Q. Can you state, Mr. Estes, about what time it was when he went away?

A. I should say it was between 9 and 10 o'clock.

Q. How did he leave town? [267]

A. He went away on the launch "Agram."

Q. What is that—the cannery tender?

A. That is our boat; yes.

Q. Is it a cannery boat? A. Yes, sir.

Q. Now, do you remember when he came back to town again—did he come back on the "Agram" when she returned, do you know, Mr. Estes?

A. Yes, he came back on the next trip.

Q. He came back on the next trip of the "Agram." Were you here on or about the 7th of the month? A. Yes, sir.

Q. Where were you that day?

A. I was at the cannery.

Q. Do you remember whether or not you saw the defendant there on the 7th of the month?

A. Yes.

Q. What transpired there, or what occurred there, that day in which the defendant had a part or did anything?

A. I had Tay Byers bring up some fishermen who had been to Seymour Canal, and in the arrangements they had to launch a boat over in Douglas, and he got several of the boys, and among them Weathers, and they went over on this launch "Agram," and launched that boat on this day.

Q. You remember that Al Weathers, the defendant here, went over to Douglas? A. Yes, sir.

(Testimony of W. A. Estes.)

Q. At the time the boat was launched Al Weathers went over? A. Yes, sir.

Q. How long were they over there, if you remember?

A. I couldn't say—I should say a couple or three hours.

Q. Did the parties return to Juneau after that?

A. Yes, sir.

Q. Have you any recollection whether or not the "Agram" left that evening for any place?

Mr. SMISER.—I object to the suggestion. [268]

Q. What did the "Agram" do that evening, if anything—the boat "Agram"?

A. They left and went after fish.

Q. Do you know where the "Agram" went to?

A. Well, they went out in Icy Straits.

Q. Who left on the "Agram," if you recall—who was on the "Agram" when she left?

A. A man by the name of Hanson, and a man by the name of Lloyd, and Weathers.

Q. Can you fix about the time that they left Juneau that day?

A. She usually left about the same time—about 9 o'clock.

Q. Well, is it your recollection that on this occasion, the 7th, that is the time they left?

A. Yes, sir.

Q. Do you know whether or not you were working your cannery that day—operating that day?

A. We wasn't running at that time—sometimes canned a few, but there wasn't many fish.

(Testimony of W. A. Estes.)

Q. There were not many fish?

A. Not very many.

Q. Are you acquainted with the boat they call the "Diana"? A. Yes, sir.

Q. How long have you known anything about her?

A. Oh, I should judge three or four years.

Q. About what is the speed of the "Diana," if you know? A. About 7 miles.

Q. Had you had any interest in the "Diana" prior to the time the Weathers boys purchased the boat? A. Yes; we used to own it.

Q. When you were the owners of the boat had you made a contract with the Standard Oil Company for oil for the boat, the "Diana"? A. Yes.

Q. When you sold the boat to the Weathers boys did you—or to Al Weathers, did he carry that contract over, or was it carried over so that he could get oil the same as you had [269] contracted for?

A. I don't know whether Hanson had any talk about that with the Standard Oil or not—I don't know anything about it.

Mr. HUBBARD.—If you don't know, that is all.

Cross-examination.

(By Mr. SMISER.)

Q. Mr. Estes, you say you saw the defendant Al Weathers here on the 4th of July, and that he left about 9 o'clock that night and went back into Icy Straits? A. Yes, sir.

Q. And that he returned here after that. Now,

(Testimony of W. A. Estes.)

you are not very clear as to that date, are you, when he returned? A. Well, he was there on the 7th.

Q. He was where?

A. He was here in town on the 7th.

Q. Well, now, how do you know that he was here on the 7th?

A. Because he helped move that boat.

Q. How do you know that boat was moved on the 7th?

A. We started these men out the first Monday after the 1st of July.

Q. The first Monday after the 1st of July?

A. Yes; and that came on the 7th of July.

Q. Well, you looked the date up—arrived at it that way, did you? A. Yes, sir.

Q. What day did the 4th of July fall on?

A. Friday, I think.

Q. Saturday, the 5th, Sunday the 6th and Monday the 7th, and you saw him here that day. You are not clear in your own mind when he came, however, from Icy Straits after he left here the night of the 4th?

A. They got back here in the night some time.

Q. What night?

A. That would be between the 6th and 7th—I wouldn't know when they came in—I didn't see anything.

Q. You were asleep, but you saw him here on the 7th. Now, when [270] they left where were you—when they left on the 7th, the evening of the 7th, where were you—at home? A. Yes, sir.

(Testimony of W. A. Estes.)

Q. Where did you live? A. Right on the dock.

Q. You say you think it was about 9 o'clock when they went back to the Straits?

A. Just about that; yes, sir.

Q. When did you see Al Weathers next after that? A. I couldn't tell you.

Q. Couldn't tell the date? A. No, sir.

Q. You couldn't have told any of these dates if you had not gone and looked up the occurrence or something else that you fixed it by, could you?

A. I did that; yes.

Q. You were here as a witness for Ernest Stage, and you fixed the date that he was here on the 8th, by looking up a ticket that you say was for unloading fish from the boat "Thalia" and which Ernest Stage helped unload on the 8th, did you not?

A. Yes, sir.

Q. And you have done the same thing in this case, gone back and fixed the date by something that occurred, and you base your testimony according to those dates now? A. Yes, sir.

Q. Now, Mr. Bennett was buying fish on a commission for your company, was he not?

A. No, sir.

Q. He was not? A. No, sir.

Q. He wasn't furnishing you with fish that he bought? A. We bought fish from him.

Q. Wasn't he buying fish for you on a regular commission? A. No, sir.

Q. He was not? [271] A. No, sir.

Q. You didn't pay him a commission on them?

(Testimony of W. A. Estes.)

A. No, sir, we didn't—we bought the fish outright.

Q. He wasn't representing your company then in the purchase of fish? A. No, sir.

Q. If he were buying fish from men who were stealing them out of the traps you would have no knowledge of the fact? A. No, sir.

Q. I presume you heard of the trap robberies during that time which were being committed, did you not?

A. I heard about it—mostly later on. There was quite a lot of talk later on in the season about traps being robbed.

Q. Along in June and the first of July wasn't there a great deal of talk?

A. No, I don't think so, because the fish didn't run that early.

Q. Didn't you notice the papers writing it up along about the first two weeks in July?

A. I couldn't state the date. I heard talk after we saw the battle ships in here.

Q. This boat, the "Diana," you had sold, or your company had sold to the Weathers boys the first of the season, I believe?

A. Yes, about the first of the year.

Q. And had they paid for the boat at that time?

A. They hadn't paid all of it.

Q. I will ask you if part of the pay of that boat wasn't a credit to their account for fish that they would deliver?

A. No, they never delivered any fish to us.

(Testimony of W. A. Estes.)

Q. They never delivered any fish to you direct, but didn't they deliver fish to Bennett?

A. Well, I wasn't out there, and I don't know anything about their deals at all.

Q. If they were robbing fish-traps and delivering fish to Bennett you had no knowledge of it?

A. No, sir.

Mr. SMISER.—That is all. [272]

Redirect Examination.

(By Mr. HUBBARD.)

Q. Where was the purchase of the boat made—where did it take place, Mr. Estes—up here or down below? A. When Weathers bought it?

Q. Yes, when they bought it. A. In Seattle.

Q. They didn't buy the boat in Alaska at all?

A. No, sir.

Q. You say there was something still due on the boat? A. Yes, sir.

Q. Were you carrying that or was the bank carrying it? A. The bank.

Q. So far as you were concerned the transaction had been completed? A. Yes.

Mr. HUBBARD.—That is all.

Recross-examination.

(By Mr. SMISER.)

Q. Were you guaranteeing—endorser on that note that the bank had, or did the bank take it without your endorsement?

A. I couldn't say just how that was arranged—it was turned over to the bank.

(Testimony of W. A. Estes.)

Q. The bank wouldn't take it without your endorsement, would they?

A. Probably not—I forget just how that was done, but I know it was turned over to the bank.

Mr. SMISER.—That is all.

Q. (By Mr. HUBBARD.) I will ask you whether or not the bank did not have a mortgage on the boat, and that mortgage was carried on the boat until Weathers sold it up here? A. Yes.

Q. (By Mr. HUBBARD.) So far as you were concerned you had no interest in the boat, and the bank had a mortgage?

Mr. SMISER.—I object to that as leading.

Mr. HUBBARD.—That is all. [273]

(Questions by Mr. SMISER.)

Q. Mr. Estes, let me ask you one more question. If you did not guarantee to the Standard Oil Company the oil furnished to the "Diana," and if it wasn't charged to you or your company in order to get a cheap rate of oil—a cheaper rate than they would pay at the oil dock?

A. Since they bought the boat?

Q. Yes, after they purchased the "Diana."

A. No.

Q. Didn't they call you up and didn't you endorse or stand good for the oil bill and let it be charged to you? A. No, sir.

Q. Because they didn't know Al Weathers?

A. No.

Q. You didn't? A. No.

Mr. SMISER.—That is all.

(Testimony of W. A. Estes.)

Redirect Examination.

(By Mr. HUBBARD.)

Q. Do you know whether the contract with reference to that oil matter, that it was carried over on the boat and they could buy it—

Mr. SMISER.—I object to that—my examination on that was cross-examination.

Mr. HUBBARD.—Well, I will withdraw the question.

Q. Can you recall, Mr. Estes, what that contract was, whether or not a contract passed to Weathers at the time that he bought the boat? Of course if you don't remember it you don't know anything about it.

A. I will tell you—there are two of us run this business; I attend to the cannery and my partner looks after the fish. If there was any talk with the Standard Oil about anything like that I don't know anything about it because I never talked with them about it.

Mr. HUBBARD.—That is all.

Witness excused. [274]

Testimony of George M. Leghorn, for Defendant.

GEORGE M. LEGHORN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. You may state your name.

(Testimony of George M. Leghorn.)

A. George M. Leghorn.

Q. Where do you live, Mr. Leghorn?

A. Live here in Juneau.

Q. What are you doing?

A. Working with Charles W. Warner Company.

Q. What is your line of work? A. Machinist.

Q. Do you know where the Northern Packing Company's cannery is here? A. Yes, sir.

Q. Did you ever work there? A. I did.

Q. When? A. Last summer.

Q. How long did you work there?

A. Worked there about six months.

Q. What were you doing?

A. I was cannery foreman and machinist.

Q. While you were working at the cannery, I will ask you—do you know the defendant here, Al Weathers? A. Yes, sir.

Q. When did you first get acquainted with him so that you knew him?

A. Shortly after I first came up here, after the first of June.

Q. You came up, you say, in June?

A. Yes, sir.

Q. Did you go to work immediately at the cannery. A. Yes, sir.

Q. When did you say you got acquainted with the defendant there?

A. Shortly after that—I couldn't say the exact date.

Q. Were you there at the cannery on the 4th of July? [275] A. Yes, sir.

(Testimony of George M. Leghorn.)

Q. I will ask you to state whether or not you recall seeing the defendant there on that date?

A. I do, very distinctly.

Q. Do you remember what time of day it was you saw him there?

A. I saw him in the afternoon, first, and then again in the evening.

Q. Would that be after dinner, do you mean, or prior to the dinner hour? A. After dinner.

Q. I will ask you if the "Agram" was in town at that time? A. Yes, sir.

Q. I will ask you if it went out on that date?

A. Yes, sir.

Q. Were you there at the cannery on or about the time she left? A. I was.

Q. You may state to the jury whether or not this defendant was there and left on the "Agram" at that time? A. Yes, sir.

Q. Can you fix about the hour that they left there?

A. It was about 9 o'clock—may have been a few minutes to or a few minutes after—very close to 9 o'clock.

Q. Have you any way of fixing the time other than just your memory—have you any particular event or anything that fixes the exact time or nearly the exact time? A. Yes, sir.

Q. You say it was in the neighborhood of 9 o'clock? A. Yes, sir.

Q. You may state what you have to fix your memory as to that time.

(Testimony of George M. Leghorn.)

A. We had a lot of cans come on the "Admiral Evans," and I had gone over to the dock and asked the man what time they would be over there, and he said they would be over about 9 o'clock, and I went home; then I went back to the cannery at 9 o'clock, and I saw the "Agram" there just getting ready to pull out—the boys were all ready to go. [276]

Q. I believe you stated the defendant here was one of the men that went out on the "Agram"?

A. Yes, sir.

Mr. HUBBARD.—That is all.

Cross-examination.

(By Mr. SMISER.)

Q. When did the "Admiral Evans" arrive?

A. She didn't arrive until about midnight.

Q. Of what day? A. The 4th of July.

Mr. HUBBARD.—Just a moment—may I ask another question or two?

Q. (By Mr. HUBBARD.) I will ask you if you were there at the cannery—working there—on the 7th of the month?

A. Yes, sir.

Q. (By Mr. HUBBARD.) What were you doing at the cannery that day, do you remember?

A. They were butchering fish in the forenoon and canning fish after dinner—late in the afternoon we started to can fish.

Q. (By Mr. HUBBARD.) You may state whether or not you saw the defendant here, Al Weathers, at the cannery in Juneau on that day?

(Testimony of George M. Leghorn.)

A. I couldn't say whether it was the 7th or not. It was a few days after the 4th—the next trip of the “Agram.”

Q. Did anything occur on that day you say you cannot fix absolutely as the 7th, but at that time was Weathers doing anything there that attracted your attention especially?

A. I asked him what he was doing in town again so soon for—

Mr. SMISER.—I object to any conversation between them.

The COURT.—Yes, do not tell what the conversation was.

Q. (By Mr. HUBBARD.) Do you recall the day when Mr. Estes sent men across the bay to float a boat?

A. Yes, sir.

Q. Do you remember that occurrence?

A. Yes, sir.

Q. Were you working there at the time? [277]

A. I was; yes, sir.

Q. Can you fix the day that was of the month?

A. It was the first Monday after the 4th.

Q. Now, I will ask you if you recall whether or not this defendant was one of the men that went over to float that boat? A. He was; yes, sir.

Mr. HUBBARD.—That is all.

Mr. SMISER.—No questions.

(Witness excused.)

Testimony of Martin Holst, for Defendant.

MARTIN HOLST, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. You may state your name to the jury.

A. Martin Holst.

Q. Where do you live? A. Juneau.

Q. What is your business, Mr. Holst?

A. Fishing.

Q. How long have you lived here?

A. Twenty years.

Q. Do you know the defendant here?

A. Yes, sir.

Q. How long have you known him?

A. A couple of years.

Q. I will ask you if you saw the defendant on the 11th of July of last year? A. Yes.

Q. About what time was it on the 11th?

A. About 10 o'clock in the forenoon. [278]

Q. Where was he when you saw him?

A. Up on the bar between here and Auk Bay.

Q. How far would that be from town?

A. Six miles.

Q. Did he have a boat with him? A. Yes.

Q. What was the condition of the boat when you saw him?

A. He was laying way up in the grass—way up

(Testimony of Martin Holst.)

in a high place on the bar where it is dry, when I came by.

Q. Were you coming into Juneau or going out?

A. I was going out.

Q. And his boat, you say, was laying up—

A. Yes, it was pretty near dry.

Q. Was the boat standing up straight, or laying over, or how? A. Laying there.

Q. Did you stop there for any length of time?

A. Yes, I stopped for a few minutes—he wanted me to wait and pull him off when the tide came in.

Q. I will ask you if you did wait?

A. No, I didn't wait because I wouldn't take the chance with my boat—the tide was pretty small, and I told him I had no time to wait, I had to get over to the cannery.

Q. What time of day did you say it was?

A. Eight or nine o'clock.

Q. Of what day? A. The 11th.

Q. What time did his boat go up?

A. Must have been the night tide.

Q. What time at night?

A. Somewhere about 11 or 12 at night.

Q. He went on to that place on the high tide about the 10th of the month? A. Probably.

Q. There was no tide between 10 o'clock and the time you saw him? A. No, there was no high tide.

[279]

Q. So taking into consideration the position of his boat he must have gone up on the tide the night of the 10th? A. Yes.

(Testimony of Martin Holst.)

Q. That is my understanding of what you testified to—is that right? A. Yes.

Q. How was the tide the night of the 9th?

A. Was a pretty good-sized tide—I have forgot how big they were—they were a whole lot bigger tide at night than day.

Q. Now, could his boat have gone up in the position it was on the day tide?

A. Not on the day tide; no.

Q. Had to be a night tide? A. Yes.

Q. Did you state the name of the boat that he had there at that time? A. “Diana.”

Q. That was the boat you saw up on the bar, you say? A. That was the boat.

Q. And you saw the defendant there on the boat?

A. I did.

Q. Had you known the boat prior to that time?

A. No—I didn’t know what he was doing.

Q. I mean did you know the boat prior to the time you saw it there—had you seen it before?

A. Oh, yes, I seen it several times.

Q. You knew the boat? A. Yes.

Q. It was the “Diana” you saw on the bar—did you see the boat early in the spring of that year?

A. Yes.

Q. What was she doing then?

A. Fishing halibut.

Mr. HUBBARD.—That is all. [280]

Cross-examination.

(By Mr. SMISER.)

Q. How near were you to the boat? A. Sir?

(Testimony of Martin Holst.)

Q. How near did you get to his boat?

A. About 4 or 5 feet—she was up on the bank and I was down where there was water.

Q. Who was on the boat?

A. Them two brothers—Weathers' boys.

Q. Anybody else?

A. I didn't see nobody else.

Q. And that was on the 11th of July? A. Yes.

Q. Why do you recall that date now?

A. Oh, just happened I came in the night before and I couldn't go over on the day tide—that is the way—I looked at the tide tables and I am pretty sure it was the 11th, as near as I can recall—I was running in every day for the cannery.

Q. There is nothing particular to make you remember that date, is there?

A. No; I never marked it down or anything.

Q. It might have been the 12th?

A. No—it was the day before—I couldn't get over on the day tide, and I had to come over on the night tide.

Q. There is nothing particular that makes you know it was the 11th and not the 12th—it might have been the 12th as well as the 11th?

A. No, I am pretty sure it was the 11th.

Q. What makes you so sure now?

A. Because there was another fellow coming across the bar and he knows it was the 11th—we were talking it over—I was talking to him and he told me it was the 11th, and he stopped and pulled the "Diana" off.

(Testimony of Martin Holst.)

Q. That is what makes you think it was the 11th, because he told you so? [281]

A. As near as I can recollect.

Q. And after you talked it over with him and he told you it was the 11th that made you think it was the 11th—you don't know yourself whether it was the 11th or not, do you?

A. That is as near as I can remember.

Q. Now, did he pull her off that same evening that you passed by? A. How?

Q. Did he pull the boat off that night that you passed it—you passed it the 11th, you think?

A. I came in on the night tide, and came in again on the day tide.

Q. When did this other fellow pull this boat off?

A. He said he helped pull it off.

Q. I know, but when—the 11th or the 12th?

A. The 11th—that same time I went over the bar—I didn't want to stay and wait for the tide, but he got them off all right.

Q. The little boats going from here to Icy Straits usually go out over the bar when the tides will permit, do they not? A. The small boats?

Q. Yes. A. Yes.

Q. It is a good deal farther around the other way? A. Yes.

Q. How much farther is it around?

A. Twenty miles.

Q. About three hours run for an ordinary small boat, isn't it?

A. Yes—two hours and a half—it takes all of

(Testimony of Martin Holst.)

that much longer to go around the Island than to cross the bar.

Q. Do you know where Whitestone Harbor is?

A. Yes.

Q. That is up in Icy Straits, isn't it? A. Yes.

Mr. SMISER.—That is all. [282]

Redirect Examination.

(By Mr. HUBBARD.)

Q. I want to ask you a question about these small boats going out from here. Do you know the water that the "Diana" draws?

A. Four or five feet, I guess.

Q. Do boats of the size of the "Diana" ordinarily go over the bar or not?

A. Yes, they do on the big tides—on the big tides.

Mr. HUBBARD.—That is all.

(Witness excused.)

(Whereupon court adjourned until 10 o'clock tomorrow morning.)

MORNING SESSION.

February 17, 1920, 10 A. M.

Testimony of Daniel McMillan, for Defendant.

DANIEL McMILLAN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. You may state your name.

(Testimony of Daniel McMillan.)

A. Daniel McMillan.

Q. What is your business?

A. Merchant.

Q. Where? A. In Juneau.

Q. How long have you been in the mercantile business in the town of Juneau?

A. Growing on 6 years.

Q. Do you know the defendant in this case, Al Weathers? A. I do.

Q. How long have you known him approximately? A. Growing on 4 years.

Q. Did you see him on the 4th day of July, 1919?

A. I did. [283]

Q. Where? A. On the street.

Q. About what time of day was it?

A. Oh, somewhere in the afternoon, about 3 o'clock.

Q. Did you transact any business for him on that day?

A. I did—I put up an order for him that evening—he gave me an order to put up for goods.

Q. Where was that order delivered?

A. It was delivered at Cash Cole's barn.

Q. About what time of day, Mr. McMillan, as near as you can get at it?

A. Some time in the evening, after dinner—must have been between 6 and 7 o'clock—around there. We had dinner at 5 o'clock, and I remember coming down and delivering the order to him.

Mr. HUBBARD.—That is all.

Mr. SMISER.—No cross-examination.

(Witness excused.)

Testimony of Albert Martin, for Defendant.

ALBERT MARTIN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your full name?

A. Albert Martin.

Q. Where do you live, Mr. Martin?

A. On 9th Street—between 9th and 10th Streets.

Q. In the town of Juneau? A. Yes, sir.

Q. How long have you been around Juneau?

A. Beg pardon?

Q. How long have you been in this portion of the country?

A. About 10 or 11 years. [284]

Q. Do you know the defendant in this case, Al Weathers? A. Yes, sir.

Q. How long have you known him?

A. For about 5 or 6 years.

Q. Did you see Al Weathers on the 11th day of July of last year? A. Yes, sir.

Q. Where did you see him?

A. On the bar, between here and Auk Bay.

Q. What time of day was it that you saw him?

A. What happened?

Q. No, what time—

A. It was about 9 o'clock in the morning, I would imagine.

Q. Where was he then—where was Al?

(Testimony of Albert Martin.)

A. He was on the boat—on the “Diana.”

Q. Where was the “Diana”?

A. On the bar, about 100 feet from the channel.

Q. The bar is about how far from the town of Juneau? A. About 7 miles.

Q. In the direction of Auk Bay. Now, how did you happen to be there at this time?

A. We went down the previous night to get some herring, and I was coming back.

Q. How was the stage of the water at the time you saw him?

A. Well, the bar wasn't quite covered with water, but the water was quite high. We managed to get over the bar with our boat, but the tide wasn't quite high—I would imagine it would be about a three-quarters tide.

Q. Where was he with reference to the edge of the channel across the bar?

A. He was on this side—a little bit on this side of the bar and about a hundred feet out of the channel, and up on a high sandbar to the left coming this way.

Q. Do you remember the condition of the tide about that time?

A. It was about a three-quarter tide.

Q. Now, from the position that he was in— [285]

A. You mean the boat?

Q. Yes.

A. Why, the boat was about, I would imagine, about a 45-degree angle—she wasn't quite afloat—

(Testimony of Albert Martin.)

she wouldn't be floating for an hour and a half year.

Q. From the condition of the tides at that time, what time would you figure his boat must have gotten up on the bar?

A. Undoubtedly he got up on the bar the night before—the previous tide.

Q. About what time of night would that be?

A. Have to get on at high tide.

Q. About what time?

A. I couldn't say—I imagine the high tide at that time would be about half-past ten.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. SMISER.)

Q. What business were you in at that time, Mr. Martin?

A. At that time I was experimenting with fish. I had been carrying on experiments down in the tide flat, and we are going down to Salt Lake to get some herring.

Q. Did you have a boat?

A. We had a small boat named the "Lillian," belonging to a man named Peterson—a 20-foot boat.

Mr. SMISER.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. How do you know that was the 11th, Mr. Martin?

(Testimony of Albert Martin.)

A. I paid the expenses, or part of the expenses, for the oil—here is an account of it.

Q. Have you got a memorandum with you that you made on that day?

A. Here is the account of it.

Q. What does it say? [286]

A. To cash, provisions boat to Eagle River for fish—no herring running—\$1.50.

Q. And that was on this occasion, was it?

A. July 11th.

Mr. RODEN.—That is all.

(Witness excused.)

(Whereupon court adjourned until 1:30 P. M.)

AFTERNOON SESSION.

February 17, 1920, 1:30 P. M.

Testimony of M. H. Truesdale, for Defendant.

M. H. TRUESDALE, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. You may state your name to the jury.

A. M. H. Truesdale.

Q. Where do you live, Mr. Truesdale?

A. Juneau.

Q. For how long?

A. A little over six years.

Q. What is your business here?

(Testimony of M. H. Truesdale.)

A. Gunsmith.

Q. What experience have you had with reference to the handling of guns and ammunition?

A. I have had a great deal.

Q. For how many years? A. Thirty years.

Q. I desire you to look at this bullet and examine it, and then I will ask you to state your opinion after you have looked at it. Now, you may state, Mr. Truesdale, whether or not in your opinion that bullet has been fired through a gun.

Mr. SMISER.—I object to that, if the Court please. I don't think that is a question that can be settled by that kind of testimony. [287]

The COURT.—The objection is overruled.

A. Well, there are two answers to that—not with a full service load. It has either been shot with a very light load, or else it has been forced through the barrel with a rod, and I can explain why, if you wish me to.

Q. Well, you may state your reason for it.

A. A full service load when shot in a bullet of that kind, the expansion at the base draws these riflings out so it will show a flange back on each side, and the rifling would be cut deeper all the way through—from an eighth to three-sixteenths of an inch—it shows heavier there than it does anywhere else on the bullet; and that one shows even all the way through—there is no flange there at all, and there is nothing showing back here. A light load will force that through the gun—it hasn't the pressure here to upset it, but it will still drive it

(Testimony of M. H. Truesdale.)

through the barrel—it is impossible to say whether it has been shot or not, but I say in my opinion it has never been shot with a full service behind it.

Q. I will ask you if there is any indication on that bullet that it was not shot out with a full service behind it. A. I would say yes.

Q. What are your reasons?

A. There are several dents in the end on the side that looks as if it had been used with a rod smaller than the caliber of the gun, and it didn't strike it in the center.

Q. Now, I will ask you to look at the point of that bullet and state whether that was ever fired out of a gun and struck a hard substance, sufficient to check it. A. No, sir.

Mr. HUBBARD.—That is all.

Cross-examination.

(By Mr. SMISER.)

Q. The force with which it would strike, Mr. Truesdale, would depend upon the velocity it was going at the time it struck [288] the object which it did strike, wouldn't it?

A. It would; but that doesn't look, in my estimation, as if it had ever any very great velocity.

Q. But if it struck something at the time its force was spent, or largely spent, it might strike without doing any serious damage to the bullet itself, might it not?

A. That would depend on what it hit.

Q. Well, if it hit in the rigging of a mast, or hit some wood, and had nearly spent its force, could

(Testimony of M. H. Truesdale.)

it not do that without disfiguring the bullet?

A. Well, it would show a mark if it hit metal.

Q. But if it hit a soft piece of wood or in the rigging of the mast?

A. A soft piece of wood would not necessarily make a mark.

Q. Or if it hit in the rigging—that is, the ropes of the mast, that wouldn't make a mark, would it?

A. No, I don't know as it would.

Mr. SMISER.—That is all.

Redirect Examination.

(By Mr. HUBBARD.)

Q. I will ask you if that should hit against a steel mast of a cannery tender, what would be the result. A. It would show very plainly.

Q. That is, the steel collar on the mast?

A. Yes, sir. There is one mark here on the side, right there, which is very slight, but if it struck anything enough to dent it there that dent would show a long ways back—it doesn't—it just shows on the side like that—it has just a little dent in there, and if that bullet had struck it would show a line on the bullet—if it struck it enough to glance it it would still show, but this is just a little dent on the side of the bullet—not over a sixteenth of an inch.

Q. Can you tell by looking at that bullet what make of ammunition is it?

A. Yes, sir; it is Government ammunition.

(Testimony of M. H. Truesdale.)

Q. What is the powder charge behind a bullet of that kind—Government ammunition?

A. About 54 grains.

Q. If it had been fired out of a shell containing 54 grains, would it not show indications of having been fired other than what you see there?

A. It would.

Mr. HUBBARD.—That is all.

(Witness excused.)

**Testimony of O. E. Bennett, for Defendant
(Recalled).**

O. E. BENNETT, upon being recalled as a witness on behalf of the defendant, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. HUBBARD.)

Q. You have been sworn, Mr. Bennett?

A. Yes.

Q. I want you to look at this photograph and state whether or not you have seen it before.

A. Yes, sir.

Q. When was it that you—do you know where the photograph was taken, or who took it?

A. Yes, sir, I think my wife took the photograph.

Q. Were you there at the time? A. Yes, sir.

Q. What does it represent, that photograph?

A. It represents two fish-traps, I think, at Strawberry Point.

Q. When was it taken, do you recall?

A. Some time in the fall, I believe—September.

(Testimony of O. E. Bennett.)

I was on a hunting trip.

Q. Where was it taken from?

A. Taken from the gas-boat "Diana."

Q. Taken from the deck?

A. Taken on the deck of the boat; yes, sir. [290]

Q. And while you were there at the time the photograph was taken I will ask you to state whether or not you had occasion to observe the distance between those two fish-traps.

A. Yes, sir; that is the reason the picture was taken.

Q. What is the distance between the two traps?

A. I should judge nearly a mile, or at least 3,000 feet—3,000 or 4,000 feet.

Q. Is there any other trap-site in between these two traps?

A. It occurs to me there was an abandoned trap-site there.

Q. Any old piling driven?

A. Some old piling driven in between the two traps.

Mr. HUBBARD.—We offer this in evidence, if the Court please.

Mr. SMISER.—No objection.

(Whereupon said photograph was received in evidence and marked Defendant's Exhibit No. 2.)

Q. Mr. Bennett, I will ask you this question; you stated in your original examination that you were buying fish on a commission, I believe?

A. Yes, sir, I received a commission of one cent—that is, my profit was one cent commission.

(Testimony of O. E. Bennett.)

Q. Let us understand—you say you received, or you paid so much for the fish?

Mr. SMISER.—Let the witness tell, and not counsel.

A. I paid so much for the fish; yes, sir.

Q. Just state how you handled the fish there.

A. The Northern Packing Company made a stipulated price of what they would pay, and I received one cent on the ground there less than I sold them for, or rather than I sold them to the Northern Packing Company for, which would give me one cent profit.

Q. Had the Northern Packing Company made that price to others, or was it just to you?

A. I think that was the stipulated standard price that the canneries who were purchasing fish had. I know the Northern Packing Company paid the same price other canners were paying. [291]

Q. And in buying in the fish you simply paid the fisherman one cent less for each fish than you would sell them here in town for?

A. Yes. For instance, if the Northern Packing Company was paying 11 cents in town, I paid 10 cents for them, and made a profit of one cent a pound.

Q. And that is what you meant when you said a commission? A. Yes, sir.

Mr. HUBBARD.—That is all.

Cross-examination.

(By Mr. SMISER.)

Q. You said in your cross-examination the other

(Testimony of O. E. Bennett.)

day that you had taken quite an interest in the defense, I believe, and were working up his testimony? A. Yes, sir.

Q. I will ask you if in the season of 1918 Al Weathers wasn't arrested for stealing fish, and if you didn't do the same thing then?

Mr. HUBBARD.—I object to that—I do not think it is admissible, if the Court please.

Mr. SMISER.—I think it is competent to show his interest in Al Weathers' actions.

The COURT.—What do you mean by doing the same thing?

Mr. SMISER.—Helped work up his testimony, for one thing, and came in and testified in his behalf, for another.

The COURT.—The objection is sustained.

Q. I will ask you if you did not appear as a witness for him on the trial of the case when he was indicted for stealing fish during the season of 1918—as the main witness, to prove an alibi for him?

A. No, sir—as a character witness only—I knew nothing of the case.

Q. I will ask you whether or not you and Weathers lived together at any time. [292]

A. He is living in my house at the present time—never prior to that.

Q. He is now?

A. Living in my house at the present time, but never prior to the last two or three weeks.

Q. Who else, if anyone, was present with you

(Testimony of O. E. Bennett.)

when your wife made this photograph—who was along on that trip?

A. When my wife made what?

Q. This photograph of the traps.

A. Mrs. Anderson was present.

Q. Anybody else? A. Al Weathers and myself.

Q. Al Weathers was present?

A. The four of us had an outing party.

Q. What boat were you using?

A. The "Diana."

Q. How long were you out on that trip?

A. About two weeks.

Q. That was in the latter part of September, last year?

A. I don't know what part of September it was—some time in September—during his release on bonds.

Mr. SMISER.—That is all.

(Witness excused.)

DEFENDANT RESTS. [293]

REBUTTAL.

Testimony of W. E. Fielding, for the Government (Recalled in Rebuttal).

W. E. FIELDING, called as a witness on behalf of the Government, having been previously duly sworn, testified in rebuttal as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name. A. W. E. Fielding.

(Testimony of W. E. Fielding.)

Q. What is your business, Mr. Fielding?

A. Agent, Standard Oil.

Q. Were you acting as such during the spring and summer of 1919? A. Yes, sir.

Q. I will ask you whether or not the "Diana" purchased oil from you during the spring of 1919?

A. It did.

Q. I will ask you to whom you charged the oil that was purchased by the "Diana"?

A. Charged it to the launch "Diana."

Q. Did you have any agreement with the Northern Packing Company in regard to it?

A. Not at that time—when it first came up.

Q. What was done at any time about that?

A. Well, at first?

Q. Yes.

A. It was charged to the Northern Packing Company because we formerly had it under that account, the season before. When Al Weathers came up he advised me to charge it to the Northern Packing Company, because it was formerly charged to that account, so that he would get the price, and then later on in the season, when the Northern Packing Company's man came up here, I called them up, or was talking with them over the phone, or had a verbal conversation with them at the dock, and it was O. K. to charge it to their account.
[294]

Q. Do you know Mr. Estes, of the Northern Packing Company? A. Yes, sir.

Q. Is he the one you refer to?

(Testimony of W. E. Fielding.)

A. It was either Estes or Hanson—Hanson comes down to the dock there for the oil—it was either one of them—I wanted to get a confirmation.

Q. And they confirmed the arrangements you had made? A. It would be all right.

Q. All right to charge it to the Northern Packing Company? A. Yes.

Mr. SMISER.—That is all.

Cross-examination.

(By Mr. HUBBARD.)

Q. By having the oil charged up the way it was, the Weathers, who were then operating the “Diana,” had an advantage in the price, didn’t they, Mr. Fielding? A. Yes, sir.

Mr. HUBBARD.—That is all.

(Witness excused.)

Testimony of J. H. Kline, for Defendant (In Rebuttal).

J. H. KLINE, called as a witness for the *defendant*, being first duly sworn, to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Please state your name. A. J. H. Kline.

Q. What position do you occupy here?

A. Agent, Pacific Steamship Company.

Q. I will ask you whether the “Admiral Evans” belongs to your line? A. Yes, sir.

(Testimony of J. H. Kline.)

Q. Have you a record of the dates of the "Admiral Evans" during [295] July, 1919?

A. Yes, sir.

Q. In and out of Juneau? A. Yes, sir.

Q. I will ask you to state when she was in here nearest the 4th of July last—when did she arrive?

A. She got into our dock at 3:30 A. M. the morning of the 4th, and left our dock at 10 A. M. the morning of the 4th.

Q. Was she here during the night hours—the night of the 4th.?

A. I have no record, but I am pretty sure she was—she had a lot of cargo—she came down to McBride's, and came down again at this end of town, but the only actual record I have is of my own dock.

Q. She left here at what time?

A. Ten o'clock in the morning, from my dock.

Q. Do you know what time she left Juneau?

A. No, I couldn't state.

Q. Can you approximate the time?

A. Not without looking up other records, no, sir—you mean by Juneau, the channel?

Q. Yes.

A. No, I would have to look up some other records. The only record I have here is my own dock.

Q. Did she come back to your dock any more?

A. No, sir.

Q. She left here at ten o'clock in the morning?

A. Left the Pacific Steamship dock; yes, sir.

(Testimony of J. H. Kline.)

Q. When she was in the channel, she wasn't at Juneau, then?

A. Not at our dock. She may have been over to Femmer and Ritter's or the Cole dock, or she may have been down to the cannery dock.

Q. Have you any other records you could determine that from? A. Yes, sir.

Q. How long would it take you to get them?

A. I would have to go down to the office and get my freight abstracts, and see how much freight she had in here, and where it [296] was discharged.

Q. When was she back in Juneau, again?

A. She got here at 1:30 in the afternoon of July 19th.

Q. When did she leave?

A. Six-thirty in the afternoon.

Q. Was she in Juneau any time during those dates, from the 4th to the 19th? A. No, sir.

Q. I will ask you if the "Admiral Watson" was in here any time about those dates?

A. The "Admiral Watson" got in here at 9:45 A. M. July 11th, and left at 11:45 A. M. July 11th. She was from the Westward—was bound south.

Q. When had she been in Juneau before?

A. The 27th of June, one o'clock in the afternoon—one o'clock in the forenoon.

Q. When did she leave then?

A. Eight o'clock at night.

Mr. SMISER.—That is all.

(Testimony of J. H. Kline.)

Cross-examination.

(By Mr. HUBBARD.)

Q. You say on the 4th when she was here she had other freight besides what she discharged at your dock? A. Yes, I am sure she did.

Q. You are not sure as to what time she did leave the channel that night—was she going Westward or going south?

A. She came up from Seattle, comes here, goes out Chatham Straits, and home again.

Q. She doesn't go to the Westward at all?

A. No, sir.

Q. Where does the Northern Packing Company get its freight at—at your dock or at their own dock?

A. If they have 25 tons we make delivery to their dock; if it is less than that we make delivery at our dock. [297]

Q. If there was more than that for delivery at the cannery she would have gone to the cannery to deliver it? A. Yes, sir.

Q. Do you remember now what the shipment was to the Northern Packing Company on that date?

A. Shipment of cans around about that date.

Q. That would be more than a 25-ton shipment, would it not? A. Yes, sir.

Q. So she would have gone to that dock?

A. Yes, sir.

Q. When you speak of the other dock you mean the dock that is known as the Cash Cole dock, don't you?

(Testimony of George Johnson.)

A. We tie up partially on Cash Cole's dock and partially on Shonaker's dock—they are right together.

Mr. HUBBARD.—It is all one dock—right together. That is all.

(Witness excused.)

**Testimony of George Johnson, for the Government
(Recalled in Rebuttal).**

GEORGE JOHNSON, upon being recalled as a witness on behalf of the Government, having been previously duly sworn, testified in rebuttal as follows:

Direct Examination.

(By Mr. SMISER.)

Q. Mr. Johnson, are you familiar with the chart there so that you could tell the distance from the different points on the chart? A. Yes, I am.

Q. I wish you would take the chart here, filed as an exhibit in this case, and come over to the table, and find Admiralty Cove on this chart.

A. It is right in here.

Q. Right where you are pointing? A. Yes.

Q. Now, will you please point out Whitestone Harbor? [298] A. Right here.

Q. Now, will you please measure according to the scale on the map here and see how far it is from Whitestone to Admiralty Cove?

A. It is a little less than ten miles.

Q. That would be a little less than 12 statutory miles? A. Yes.

(Testimony of George Johnson.)

Q. Now, about how far is it from Admiralty Cove to Juneau the way the boats would run in going over the bar, which is a shorter distance?

A. Fifty miles.

Q. Now, how far is Funter Bay from Admiralty Cove?

A. From the mouth of Funter Bay to Admiralty Cove is a little over three miles.

Q. I will ask you whether or not on the regular course from Juneau to Whitestone Harbor you pass Funter Bay?

A. Yes, it would be practically in line.

Q. Now, how far is it from Funter Bay to Whitestone? A. Eleven miles.

JUROR.—He is speaking of statutory miles?

The WITNESS.—Nautical miles.

Q. (By Mr. SMISER.) That would be how much in statute miles—it would be a little less?

A. Yes.

Mr. SMISER.—Take the witness.

Cross-examination.

(By Mr. HUBBARD.)

Q. In running on the regular course from Juneau to Whitestone you would not go nearer Funter Bay than three or four miles, would you?

A. I think going on a straight line it would be about two miles off, I think.

Q. Do you know the distance around Douglas to Whitestone? A. To Whitestone? [299]

Q. Yes, going around Douglas Island.

A. I would have to look on the chart there—it is

(Testimony of George Johnson.)

50 miles to Admiralty Cove.

Q. By the way of Douglas Island?

A. Around Douglas Island.

Q. And you say it is about 60 knots from here to Whitestone?

A. I didn't say how far it was from here to Whitestone.

Q. I thought you were asked from Whitestone in, or from here out to Whitestone?

A. No, it was Admiralty Cove.

Q. And it is 10 knots beyond Admiralty Cove to Whitestone?

A. I think it is about 11 or 12—you can measure it on there—nautical miles.

Q. How many did you say it is from here to Admiralty Cove? A. Fifty.

Q. And about 11 from there to Whitestone?

A. Yes.

Mr. HUBBARD.—That would make about 61 miles. That is all.

Redirect Examination.

(By Mr. SMISER.)

Q. Admiralty Cove is not upon the direct line from Whitestone Harbor to Juneau, is it?

A. No, sir.

Mr. SMISER.—That is all.

(Witness excused.)

GOVERNMENT RESTS.

TESTIMONY CLOSED.

Whereupon after argument had the Court instructed the jury, orally, as follows: [300]

Instructions of Court to the Jury.

The COURT.—Gentlemen of the Jury: In the first count of this indictment which you are trying it is charged by the grand jury that Al Weathers, Ike Weathers and Ernest Stage did, *on* on the 8th day of July, 1919, unlawfully, wilfully, maliciously and feloniously shoot Alfred Knutson with intent to kill, wound and maim him, the said Knutson. In the second count of said indictment it is charged that the said Al Weathers, Ike Weathers and Ernest Stage assaulted the said Knutson by shooting at him with intent to take, steal and carry away certain fish in a trap possessed by him and others; and in the third count of the indictment it is charged that the said Al Weathers, Ike Weathers and Ernest Stage did, on the said day, assault the said Knutson by shooting at him with intent to steal, take and carry away certain fish from a scow then in the possession of said Knutson and others.

You will notice that the second and third counts are very much alike—that is, they charge an assault with intent to commit the crime of robbery, while the first count charges a shooting with intent to kill, wound or maim.

The indictment has joined all three of these defendants, and ordinarily they would be tried at one and the same time, but the defendant Al Weathers has demanded a separate trial, which he had a right to do. The question now before you is whether or not the said Al Weathers is guilty of the offenses charged against him, or either of them.

The indictment in this case, and in all cases, is simply the charge of the grand jury. It is not to be taken as evidence of the guilt of the defendant. You are allowed to take it with you into the jury-room to see just what is charged, but your function is to determine whether or not the charge is sustained by the evidence.

When the defendant entered upon this trial the law presumed him to be innocent. That presumption was a shield which the law threw around the defendant. He entered upon the trial [301] of this case with the presumption in his favor, and that presumption would entitle him to an acquittal at your hands unless the whole evidence has convinced your minds beyond a reasonable doubt that he is not innocent, but that he is guilty of the offense with which he is charged. Of course that presumption of innocence could not, in any case, prevail against the truth of guilt, if guilt be shown; and when it is said a defendant is presumed to be innocent the meaning is that it is for the prosecution to prove him guilty, and if it does not prove him guilty the presumption of innocence will prevail and entitle the defendant to a verdict of not guilty.

The separate counts in this indictment are to be considered by you somewhat in the nature of separate indictments.

You will first consider the first count, and as I have said, that is a count which charges that the defendants, including the defendant on trial, shot Knutson with intent to kill, wound or maim him.

Under this count it is incumbent upon the Government, if it would have you convict, to prove to your satisfaction beyond a reasonable doubt each material allegation of that count. The material allegations of that count are, first, that the defendant did shoot at the said Knutson. So far as the actual shooting is concerned it would not be necessary that the Government should show that Al Weathers actually fired the gun, or loaded it, or aimed it; it would be sufficient on this point if the Government should prove beyond a reasonable doubt that the shooting was done by anyone in conjunction with defendant and acting in concert and with a common purpose and understanding, and in execution of a common design; second, that said shooting, if any, was done with the intent to kill, wound or maim.

Now, the second count is under a different section of the statute, denouncing it as a crime for one to assault another with intent to rob him. The charge under this count is that the defendants, including the defendant on trial, assaulted Knutson by shooting at him with intent to rob him of certain fish in the possession [302] of himself and others in a trap of the Hoonah Packing Company situated at Admiralty Cove. To convict under this charge, the Government would have to prove to your satisfaction, beyond a reasonable doubt, that an assault was made as alleged—that is, that the defendant did shoot at Knutson, or aid in the shooting, with intent to put him in fear and by violence to rob him of the fish which it is alleged had been com-

mitted into the care of him and certain other persons and which were confined in a trap of the Hoonah Packing Company at Admiralty Cove.

Now, the third count charges very much the same as the second count, only it alleges that the fish which it is alleged the defendant intended to rob Knutson and the others of were on a scow then and there situated at or near Admiralty Cove. Under that charge it would be incumbent upon the Government, if it would have you convict, to prove, beyond a reasonable doubt, that the assault was made as alleged—that is, by shooting at Knutson, and that the intent was to rob him and the others of the fish that were on the scow aforesaid.

The charge in all three of the counts is of the doing of certain things with a specific intent, and the Government must prove the intent just as well as the act which it charges to have been committed. In other words, before the jury gets to a consideration of the intent of the defendants it must first decide whether or not the specific act charged was done—that is to say, whether or not the assault by shooting was made. If the jury decides that there was no such shooting or assault, then all the evidence as to intent is immaterial and should not be considered; but if the jury considers that it has been proven beyond a reasonable doubt that there was shooting or an assault by shooting made on Knutson as charged in the indictment, then they should consider the question of the intent with which it was made; and if the Government has proven beyond a reasonable doubt both the assault-

ing and the intent, then the jury should find the defendant guilty. [303]

But how is the jury to find with what intent an act is done, providing, of course, it finds that the act was done? The jury cannot look into a man's mind as it would open the lid of a box and peer into the receptacle. A jury can only ascertain the intent with which an act is done by considering all the facts and circumstances under which the act was done. What preceded, what accompanied, what followed, the doing of the act? What reason or motive or advantage was there in the doing of the act? What had been the previous course of the parties? What had preceded, accompanied and followed the doing of other acts of like nature, if any have been shown in evidence? Did the doers of the act have a plan and a system under which the act was done, and was the doing of the act a part of that system or plan? Such questions as these, and many others, would naturally arise in a person's mind in trying to ascertain the intent with which any particular act was done. When a man is on trial he is only tried for one offense at a time, or for such offenses as have been properly joined in the indictment. Now, in this case there are no offenses joined in this indictment except the shooting at and assault upon Knutson. There has been evidence introduced of similar offenses alleged to have been committed by the defendants at other times and places. The evidence of these other transactions was admitted before you for the sole purpose of the bearing which it might have on the

question as to intent. If you find that the defendants did not do the shooting or make the assault charged, then it would not make any difference what other offenses they, or either of them, might have been guilty of, or with what intent those other things were done. But if you find from the evidence beyond a reasonable doubt that the defendant did make the assault, then you may inquire whether or not there has been established to your satisfaction the fact that he made other assaults of like nature with intent similar to the intent charged in this case—that is, did he make other assaults with intent to kill or to rob fish-traps. In other words, the evidence [304] of other offenses can only be taken into consideration by you if you find that the particular transactions charged to have occurred at Admiralty Cove did occur and you have passed on to the question of ascertaining the intent with which those acts were done.

As to the second and third counts, the material allegations which the Government must prove beyond a reasonable doubt are the same in substance as in the case of the first count, that is, first, the doing of the act, and, second, the intent with which the act was done. It is not at all material whether there was or was not any fish in the scow or trap. The gist of the offense charged is the doing of the act with the unlawful intent—not whether the intent was frustrated.

The Government has introduced evidence which, if believed by you, tends to establish the time when, and the place where, the alleged crime was com-

mitted, and the defendant has introduced evidence which, if believed by you, tends to establish a defense of what is called an alibi—that is, that he was at another place at the time the offense was committed. The Court instructs you that all the evidence bearing upon that issue should be considered by you along with all the other evidence in the case, and if it raises in your mind a reasonable doubt as to the presence of the defendant at the time and place where the crime is charged to have been committed, if you find that a crime has been committed, you should acquit the defendant.

I have used the words “beyond a reasonable doubt.” As aforesaid it is the duty of the Government, if it would convict, to prove every material allegation of the indictment beyond a reasonable doubt. The expression “beyond a reasonable doubt” does not mean beyond every possible doubt—it does not mean beyond a captious doubt or a conjectural doubt—it does not mean that you must be satisfied to a mathematical certainty of the truth of the charge—a demonstration to a mathematical certainty is seldom possible and never required. It does not mean that you must actually know. The expression means this, that you must take all the evidence in the [305] case, and all the facts and circumstances proven in the case, and surrounding the matter in dispute, so far as they have been shown by the evidence, and after a fair and candid consideration thereof, if you are satisfied, that is, convinced, of the truth of the charge with that degree of conviction which would lead you to

act in the affairs of like importance in your own life, then you are said to be satisfied beyond a reasonable doubt. You need not be satisfied to an absolute certainty—a moral certainty is sufficient. That is to say, after considering all the evidence if you are satisfied to a moral certainty—if from that evidence you have an abiding conviction amounting to a moral certainty of the truth of the charge, you are said to be satisfied beyond a reasonable doubt. The reasonable doubt spoken of has reference to the whole case—that is to say, it has reference to the question of whether the defendant is guilty or is not guilty of the offense charged.

You are to decide this case on the evidence which has been introduced at the trial and on the law as given you by the Court. While you are the sole judges of the evidence and of its effect, yet your power of so judging is not arbitrary, but to be exercised with legal discretion and in subordination to the rules of evidence. You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction to your minds against a less number, or against a presumption or other evidence satisfying your minds. A witness wilfully false in one part of his testimony may be distrusted in others. Testimony is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is the power of one side to produce and of the other side to contradict; and, therefore, if the weaker and less satisfactory evidence is offered when it appears that stronger and more satis-

factory evidence was within the power of the party, the evidence offered would be viewed with distrust. Arguments of counsel are not evidence. Counsel on both sides have stated their recollection and interpretation of the evidence and the inference which they think should be drawn from that [306] evidence. It is meet and proper that you should listen to their statements and weigh their arguments in the light of your own memory, reason and common sense; but when all is said and done you are the sole judges as to what the evidence was and as to what weight should be attached to it and what deductions are to be drawn from it, for you are the sole judges of the facts and upon you rests the responsibility.

If in these instructions or during the trial the Judge of this court has said or done anything which you think indicates that he desires to influence your finding as to the facts, put such thought far from you. Rulings on the admissibility of evidence are rulings on matters of law with which you have nothing to do; and the Judge of this court did not intend, and has no right to produce or attempt to produce any such impression. In the trial of this case you are as much a part of the court, of the machinery of the law as it moves to secure justice and order among men, as is the Judge, only yours is a different function from his—he tells you what the law is and it is your duty to accept as the law what he tells you the law is. He is to see that a defendant gets a fair and impartial trial under the law of the land, and by your verdict you tell the Judge what the facts are, and then the law itself

speaks. You are trying issues between the Government and the defendant—not between the Government's lawyers and the defendant's lawyers. You are trying the defendant, not the witnesses. So far as the witnesses are concerned, all that interests you is to determine who among them has told the truth in this case and what inferences should be drawn from the testimony which you do believe.

Only that testimony is to be considered by you which has been introduced and received in evidence. If any evidence offered has been rejected by the Court you are not at liberty to speculate or conjecture on what that testimony was—you are simply not to consider the matter either for or against the defendant. You cannot go outside of the evidence or adopt any theory either for or against [307] the defendant which is not fairly and reasonably deducible from the evidence, or from the lack of evidence.

Our statute provides that in the trial of or examination upon all indictments, complaints, information, and other proceedings before any court, magistrate, jury, or other tribunal, against persons accused or charged with the commission of crimes or offenses, the person so charged or accused shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury, under the instructions of the Court, or to the discrimination of the magistrate, or other tribunal before which such testimony may be given, provided, that his

waiver of such right shall not create any presumption against him.

It is for you to determine which witnesses are to be believed and what weight you will attach to their testimony.

You make up your minds which witnesses are to be believed when they testify in court in very much the same manner as you determine that question in the ordinary affairs of life. A person tells you an important thing—you are anxious to know whether he is telling the truth or a falsehood—it is important that you should know. What do you do? You size him up—you consider his appearance and demeanor—you want to know whether he knows what he is talking about—you consider whether or not he was in a position to know of the truth of what he asserts, and whether he has the ability and the inclination to tell truly and faithfully what he does know; you take into consideration his candor or lack of candor; you ask yourselves, has he told me the whole truth, or is he trying to conceal something? Are his answers frank and straightforward, or are they weak, shuffling or evasive? You ask him questions or listen while others ask him questions—you cross-examine him and you note how he stands the cross-examination—you take his entire story and ask yourselves, is it reasonable—is it consistent in its various parts and does it comport with human experience and with undoubted facts and circumstances and with reason and with common sense? And, too, you would want to know [308] whether or not he has any interest or object

or purpose in telling you a falsehood instead of the truth—you would not necessarily disbelieve him because he has some interest, but you would put that interest into the scales with all the other facts and circumstances and weigh the whole thing.

Now, that is what you must do with every witness who has testified in this case, and in much the same manner you must treat every fact and circumstance appearing in this case—weigh it, measure it, hold it up to the light, look through it; accord to each fact and circumstance its due proportion in the entire scheme of events which you are considering, neither magnifying trifles nor minimizing things of importance. That is, you are to weigh the evidence and not count the number of witnesses.

Now, gentlemen, you have a solemn duty to perform—a duty to society and a duty to the defendant. If the defendant has been proven to be guilty your duty to society commands that you say so by your verdict, uninfluenced by sympathy of any kind, to the end that the laws made by society may be enforced. On the other hand, your duty to the defendant, and your duty to society, also, commands that if he has not been shown to be guilty you should acquit him, and that you should be swayed by neither passion nor prejudice nor sympathy. You are to strive to get at the truth of the matter. The punishment is in the discretion of the Court within the limit prescribed by law.

You will be handed four forms of verdict—

- 1—If you find the defendant guilty of all three of the charges you will sign the verdict which says, “Guilty as charged in the indictment”;
- 2—If you find him not guilty of any of the counts you will sign the verdict which says, “Not guilty as charged in the indictment”;
- 3—If you find him guilty of shooting with intent to kill—that is, the first count, but not guilty of shooting with intent to rob, then your verdict would be, “Guilty as [309] charged in count 1, but not guilty as charged in counts 2 and 3”;
- 4—If you find him not guilty of shooting with intent to kill, but you do find him guilty of shooting with intent to rob, then you should sign the verdict which reads “Guilty as charged in counts 2 and 3, but not guilty as charged in count 1.”

You will elect one of your number as foreman and he will sign such verdict as you may agree on.

Whereupon the jury duly retired to deliberate upon their verdict, and afterwards, to wit, on the 18th day of February, 1920, duly returned into court their verdict as follows:

“We, the jury, empaneled and sworn in the above-entitled cause, find the defendant Al Weathers guilty as charged in Counts Two and Three of Indictment, and Not Guilty as charged in Count One thereof; and we recommend clemency of the Court on account of defendant’s youth.

Dated at Juneau, Alaska, this 18 day of February, 1920.

C. J. SKUSE,
Foreman."

And afterwards, to wit, on the 20th day of February, 1920, said defendant Al Weathers made and filed herein his motion for a new trial as follows:
[310]

[Caption and Title.]

Motion for New Trial.

Comes the above-named defendant, Al Weathers, and moves the Court that the verdict in said cause be set aside and a new trial be granted him for the following causes materially affecting the substantial rights of the said defendant, to wit:

FIRST. Insufficiency of the evidence to justify the verdict, in that there were no testimony tending to show that the defendant, Al Weathers, was at the place where the attempted robberies are alleged to have been committed at the time of the alleged commission thereof.

SECOND. Error in law occurring at the trial and *accepted* to by the defendant in the admission of the testimony of Alfred Knutson, Henry Alexander, Dr. W. A. Borland, John Hanson, F. J. Ferguson, Homer Lee, Herman Mitts, Andy Abrahamson, Arvid Johnson, Ted Liknes, concerning the commission of offenses other than those for which the defendant was then on trial.

THIRD. Error in law committed by the Court

in refusing to grant defendant's motion to strike the testimony of John Hanson, Homer Lee, F. J. Ferguson, Dr. W. A. Borland, and that portion of the testimony of Alfred Knutson, referring to incidents alleged to have occurred on the 10th day of July, 1919, and all the testimony given on behalf of the plaintiff with reference to the commission of offenses other than those committed on the eighth day of July, for which offense the defendant was then on trial.

O. P. HUBBARD,
HENRY RODEN,
Attorneys for Defendant.

Receipt of true copy of foregoing motion acknowledged this 20th day of February, 1920.

JAMES A. SMISER,
U. S. Attorney. [311]

And thereafter, to wit, on the 1st day of March, 1920, the Court overruled said motion, filing herein its written opinion; and thereafter, on the 6th day of March, 1920, entered judgment and sentence as appears by the records of the court. [312]

[Caption and Title.]

Order Settling Bill of Exceptions.

United States of America,
Territory of Alaska.

I, the undersigned, presiding Judge at the trial of the above-entitled cause, do hereby certify that the above and foregoing contains a full, true and accurate transcript of all the testimony adduced and

heard at the trial thereof on the issues joined, with the objections and exceptions of the defendant to the reception and rejection of evidence, the charge of the Court to the jury, the motion for new trial and all other matters and things occurring thereat and not otherwise of record.

And I now sign and allow the same as and for a true and correct bill of exceptions of all matters contained therein, and order the same to be filed and when so filed to be and become a part of the record in this cause.

Dated at Juneau, Alaska, this 15th day of April, 1920.

ROBERT W. JENNINGS,
District Judge.

Filed in the District Court, District of Alaska,
First Division. Apr. 15, 1920. J. W. Bell, Clerk.
By ———, Deputy. [313]

[Caption and Title.]

Regular January Term, 1920.

Verdict.

We, the jury impaneled and sworn in the above-entitled cause, find the defendant Al Weathers guilty as charged in Counts Two and Three of Indictment, and Not Guilty as charged in Count One thereof, and we recommend clemency of the Court on account of defendant's youth.

Dated at Juneau, Alaska, this 18 day of February, 1920.

C. J. SKUSE,
Foreman.

Filed in the District Court, District of Alaska, First Division. Feb. 18, 1920. J. W. Bell, Clerk. By John T. Reed, Deputy. 9:50 A. M.

Entered Court Journal No. H, page 178. [314]

In the District Court for the District of Alaska,
Division Number One.

No. 1346-B.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

AL WEATHERS,
Defendant.

Judgment and Sentence.

This cause comes on regularly at this time for the imposition of sentence upon the above-named defendant, Al Weathers, on the verdict of guilty of the violation of Section 1898, Compiled Laws of Alaska, as charged in Counts two (2) and three (3) of the indictment herein (assault with intent to commit robbery), rendered by the jury herein on the 18th day of February, 1920. The defendant appears in court, in person, on obedience to his bail herein, and is also represented by his attorneys, O. P. Hubbard and Henry Roden, Esquires. The

plaintiff is represented by James A. Smiser, Esquire.

Thereupon the defendant is asked by the Court if he has any reason to offer why the judgment and sentence of the Court should not now be imposed upon him, and the defendant not offering any valid or sufficient reason,

It is the JUDGMENT of the Court that said defendant, Al Weathers, is guilty of the violation of Section 1898, Compiled Laws of Alaska, and it is the SENTENCE of the Court that said Al Weathers, be taken by the United States Marshal for the District of Alaska, Division Number One thereof, to the United States Penitentiary at McNeil Island, in the State of Washington, and there delivered to the warden of said institution, and that he be imprisoned in said penitentiary for the period of four (4) years, and that he stand committed until this sentence is fully executed.

Done in open court this 6th day of March, 1920.

ROBERT W. JENNINGS,

District Judge.

Filed in the District Court, District of Alaska, First Division. Mar. 6, 1920. J. W. Bell, Clerk.
By ———, Deputy. [315]

[Caption and Title.]

Petition for Writ of Error.

To the Honorable Justices of the United States Circuit Court of Appeals for the Ninth Circuit, and the Honorable ROBERT W. JENNINGS, Judge of the District Court for the District of Alaska, First Judicial Division.

Comes now Al Weathers, defendant below and plaintiff in error, and complains that in the record and proceedings had in the said action, and also in the rendition of the sentence and judgment in the above-entitled action in the said District Court, at the October term, 1919, thereof against the said defendant below and plaintiff in error, Al Weathers, on the 6th day of March, 1920, manifest error having happened to the great damage of the said defendant below and plaintiff in error, whereof the said defendant below and plaintiff in error prays the Honorable Judges for the allowance of a writ of error, and for an order fixing the amount of bond to cover costs and damages in the said action, and for such other orders and process as may cause the same to be corrected by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 15th day of April, 1920.

O. P. HUBBARD,
HENRY RODEN,

Attorneys for Defendant Below and Plaintiff in Error.

Allowed.

ROBERT W. JENNINGS,
Judge.

Filed in the District Court, District of Alaska,
First Division. Apr. 15, 1920. J. W. Bell, Clerk.
By ———, Deputy. [316]

[Caption and Title.]

**Order Allowing Writ of Error and Fixing Amount
of Bond.**

Defendant below and plaintiff in error having this day filed his petition for a writ of error from the decision and judgment made and entered herein, together with an assignment of errors, and also praying that an order be made fixing the amount of security which said defendant below and plaintiff in error should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this court be suspended and stayed until the determination of said writ of error by the Circuit Court of Appeals and said petition having been duly allowed:

It is now ordered that upon said defendant below and plaintiff in error filing a good and sufficient bond in the sum of six thousand dollars, to the effect that he will abide by and perform the orders of this court and the orders and judgment of the said appellate court, and on his failure to do so that the signers of said bond will pay to the United States the said sum above mentioned, which said bond shall be approved by this Court and when said bond is given and approved all proceedings under

the said judgment and sentence appealed from by this writ of error shall be stayed until the determination of the said writ of error by the United States Circuit Court of Appeals for the Ninth Judicial Circuit and in the meantime as long as the conditions of said bond are complied with the defendant shall be allowed to go at large.

Dated this 15th day of April, 1920.

ROBERT W. JENNINGS,
Judge.

Filed in the District Court, District of Alaska, First Division. Apr. 16, 1920. J. W. Bell, Clerk.
By _____, Deputy.

Entered Court Journal No. H, page 230. [317]

[Caption and Title.]

Assignment of Errors.

Comes now Al. Weathers, defendant below and plaintiff in error in this action, in connection with his petition for a writ of error, and makes the following assignment of errors which he avers occurred upon the trial of this cause, to wit:

1.

The Court erred in admitting the evidence of the witness Alfred Knutsen,, who testified to seeing the gas-boat "Diana" on the 10th day of July, 1919, being two days after the crime alleged to have been committed by the defendant herein was committed, and particularly to that portion of the evidence of said Alfred Knutsen, as follows:

"Q. What was your purpose in wanting to hail it?

A. I recognized that was the same boys (boat) that was shooting at us before.

Mr. HUBBARD.—I don't believe that testimony is admissible. He is asking what his purpose was in hailing the boat on the 10th and it is incompetent and irrelevant so far as the issues in this indictment are concerned.

Mr. SMISER.—No, it is not, in my judgment.

Mr. HUBBARD.—It might come in later on in rebuttal but at this time it is not admissible.

The COURT.—I do not see how it can possibly injure anybody—it is only an explanation of what he was doing himself, and it does not connect the defendant in any way as yet. I think he may testify what his purpose was, and if the defendant is not connected with it in any way it will be stricken.

Q. What was your purpose in hailing her, Captain?

A. The purpose was, I recognized her to be the same boat.

Mr. HUBBARD.—I thought the Court ruled that he could not answer the question as to his purpose.

The COURT.—The objection is overruled—he may testify what his purpose was.

Mr. HUBBARD.—Exception.

Q. Did you know what the name of the boat was at this time?

A. I didn't see the name on her, no.

Q. You didn't know at that time and you

wanted to find out what the name of it was, was that it?

A. Yes, I wanted to see the name of it.

Q. You wanted to see the name of it and that is the reason you hailed [318] it, as you recognized it as the boat that did the shooting and you wanted to see the name of the boat, is that it?

Mr. HUBBARD.—I object to that—the witness has not stated that.

The COURT.—No, he did not say that—do not lead the witness.

Q. (By Mr. SMIZER.) The question was what was your purpose in hailing the boat and going up close to it,—what did you do that for?

A. I wanted to get up close and see the name of it.

Q. Why did you want to see the name of that boat?

A. I recognized it to be the same boat that was up there the 8th.

Q. That shot at you?

A. The 8th.

Q. Now, what did you do in order to hail it?

A. I changed my course.

Q. Well, what did you do with your scow?

A. I dropped the scow—left the scow—dropped the scow. * * *

Q. Now, when you approached the boat what did it do?

A. Well, after they run a little while they turned right around.

Mr. HUBBARD.—If the Court please, I think he has now stated what his purpose was, and what he accomplished. Now he is testifying to what the boat did.

The COURT.—That is the very object of the testimony, to find out what the boat did—not what he did. The very object of this testimony is to show what the boat that he recognized as being the boat that fired the shots did.

Mr. HUBBARD.—We wish to object to any testimony as to what it did as being incompetent, irrelevant and immaterial in this case at this time, what the boat did. The purpose, we understood, was that he wanted to identify the boat.

The COURT.—The objection is overruled.

Mr. HUBBARD.—The defendant saves an exception to the ruling of the Court. To the introduction of which the defendant objected which objection was overruled by the Court and an exception was allowed.”

2.

The Court erred in admitting the testimony of the witness W. A. Borland, who testified to seeing the boat “Diana” several days after the occurrence for which the defendant was on trial in this court, and that he saw the defendant upon the said day on the said gas-boat at a place some twenty miles distant from the scene where the offense is alleged to have been committed, and particularly to that portion of said testimony being as follows:

“(By Mr. SMISER.)

Q. Please state your name.

A. W. A. Borland.

Q. Where do you live? A. Hoonah.

Q. What is your business?

A. Physician.

Q. Do you practice medicine at Hoonah?

A. Yes, sir.

Q. Do you occupy any office there?

A. Yes sir; commissioner.

Q. United States Commissioner?

A. Yes, sir.

Q. Where were you on the 10th of July, 1919?

A. Well, I left the cannery on a boat bound for Admiralty Island.

Q. What boat?

A. The 'Forrester.' [319]

Q. Who was captain of the boat?

A. Knutsen.

Q. In making the trip I will ask you whether you encountered another boat or saw another boat. A. Yes, sir.

Q. I will ask you what you did with reference to that boat after seeing it.

Mr. HUBBARD.—We will reserve an exception to this testimony as not being competent. It in no way tends to prove any of the allegations in the three counts of the indictment here—it is not relevant.

The COURT.—The objection will be overruled provided the defendant is connected with it.

Mr. HUBBARD.—This witness does not claim to have been at Admiralty Cove at the

time of the original transaction at all, which has been testified to by the other witnesses.

The COURT.—The defendant would not have to be connected by this witness.

Mr. HUBBARD.—I reserve an exception to the testimony of the witness on this question.

A. One of the men came and reported to the Captain,—

Mr. HUBBARD.—I object to that, if the Court please.

Q. (By Mr. SMISER.) Just tell what was done.

A. They changed their course and followed the boat.

Q. About how far off would say the boat was at that time—at the time they changed their course and followed?

A. Two and one-half or three miles—something like that.

Q. How long did they continue to follow it?

A. Well, I think it was over an hour, perhaps something like that.

Q. Did the 'Forerster' boat have anything with it at that time? A. Had a scow.

Q. What was done with reference to the scow?

A. Well, after they had followed the boat a considerable time, they were not making very much headway, and Captain Knutson dropped the scow.

Q. Then what did they do?

A. As soon as the scow was dropped, we had probably gone a few hundred yards when the

boat that we were following turned and came back across the bow of the 'Forrester.'

Q. Came back across the bow of the 'Forrester.'

A. Yes.

Q. Now, describe what transpired between the two boats from there on.

A. Captain Knutson stopped the 'Forrester', and the boat we were following turned across the bow and then stopped, and the men came out and covered up the name on the bow.

Q. What boat are you speaking of?

A. The 'Diana.'

Q. Is that the boat you had sighted?

A. That we were following, yes, sir?

Q. Go ahead—the men came out and did what?

A. They dropped a canvas over the name on the boat—or covered—I don't know whether it was canvas or not, and came out and placed up something against the gunwale of the boat—a square, I should judge, $2\frac{1}{2}$ or 3 feet square, and a man came out of the pilot-house with a gun, and one went up the forecastle and the other was on the back of the pilot-house.

Q. How many men did you see?

A. I saw two at the time on the 'Diana.'

Q. I will ask you if anything was said by the men on the 'Diana' at that time?

A. Yes, they hollered, 'Come on, you square heads.' [320]

Q. Hollered, 'Come on you square heads.'

A. Yes, sir.

Q. Was that at the time you saw the man with the gun? A. Just about that.

Q. Now, when Captain Knutson saw that what did he do?

A. Got scared, become frightened, turned the boat around, said, 'They are going to shoot,' and started away.

Q. Now, I will ask you if you know the defendant, Al Weathers? A. Yes, sir.

Q. I will ask you if you recognized the men on the boat at that time?

A. He was the only man I recognized, yes, sir.

Q. You recognized him? A. Yes, sir.

Q. Yes,—well, he was the man who came out of the pilot-house with the gun; at the time he came out I didn't recognize him as being Al Weathers, but he was the tall one.

Q. Now, do you know Al Weathers' voice?

A. Well, yes, I do.

Q. I will ask you whether or not at that time you recognized his voice?

A. I thought I did at the time, yes, sir."

To the introduction of which the defendant objected, which objection was by the Court overruled and an exception allowed.

3.

The Court erred in admitting the testimony of the witness Iver Stenzo, and particularly that portion of the testimony of the said witness referring to matters occurring prior to the time upon which the offense alleged in the indictment herein was committed, and particularly that portion of the testi-

mony of the said witness reading and being as follows:

“Q. I will ask you whether you were at Admiralty Cove about the middle of June.

A. Yes, I was there.

Q. I will ask you whether or not any trap was robbed at that time? A. Yes, there was.

Q. What trap?

A. The Bay trap and the floating-trap No. 4.
[321]

Q. Do you know whether they had fish in them at that time?

A. Yes, they had a few.

Q. Do you know how many?

A. About 200 I think in the Bay trap.”

Mr. HUBBARD.—If the Court please, we desire to save an exception to this testimony with reference to the 16th, that he is testifying to.

The COURT.—The testimony is admitted Mr. Smizer, on your promise to connect it—if it is not connected it will be stricken.

Mr. SMIZER.—I think we will do that satisfactorily, your Honor.

The COURT.—Very well. It will be admitted, subject to a motion to strike later on if counsel thinks it is not connected.

Q. About how many fish were in No. 4 at that time? A. I don't know.

Q. What boat—did you recognize the boat?

A. Yes, it seemed to be the same boat.

Q. What boat was that?

A. The ‘Diana.’

Q. I will ask you if you were there on June 10th? A. Yes, I was.

Q. I will ask you if any trap was robbed on that occasion?

A. Yes; No. 1 was robbed.

Q. What time did that occur?

A. I don't know; it was in the night-time.

Mr. HUBBARD.—We reserve our exception to this testimony, the same as the others, if the Court please—we do not think it is material or competent in this case.

The COURT.—The ruling will be the same.

Q. Did you see that boat on that occasion?

A. No.

Q. All you know about this particular instance is that the trap was robbed on this particular date? A. Yes.

Mr. HUBBARD.—Now, if the Court please, we will move to strike out his testimony—he said he didn't see the boat.

The COURT.—The District Attorney does not have to connect it with this witness. When the Government's testimony is closed if it is not connected then is the time to make your motion to strike it out. He does not have to connect it by this one witness—he may have some other witness to connect it by—I cannot tell.

Mr. HUBBARD.—We will keep our exception until later."

4.

The Court erred in admitting the testimony of the witness John Hanson in which said witness testified

to having seen the boat "Diana" on other occasions and at various times, other than the time when the offense alleged in the indictment was committed, and particularly that portion of said witnesses' testimony which is as follows:

"Q. I will ask you if anything occurred on the night of the 30th of June there at your trap?

A. Yes.

Q. What occurred. [322]

Mr. HUBBARD.—The evidence is not admissible. It is a transaction that occurred on the 30th day of June at a point a long distance from where the transaction took place which we are trying. It is not in any way connected with the case which is on trial, and there is nothing that connects it up in any way with that transaction. The evidence is inadmissible—it is incompetent, irrelevant and immaterial as to this case, and has a tendency to prejudice the minds of the jury.

The COURT.—I think, Mr. Smiser, that I indicated what my ruling is on these matters. If you can connect this boat with any similar offense—holding up traps—it would be evidence of intent and purpose, but if this witness' testimony is not any more connecting than the last witness' testimony—

Mr. SMISER.—Well, it is.

The COURT.—I would have sustained an objection to the last witness' testimony—I would have stricken it out if the motion had been made because that witness could not identify the boat

and did not identify any men that were on it. Unless this witness can identify the boat, or identify the men, or connect it in some other way, the objection will be well taken.

Mr. SMIZER.—I think it will be fully identifies, your Honor.

The COURT.—Very well, I will admit it subject to a motion to strike it when the testimony is finished.

Mr. HUBBARD.—We understand that as far as the testimony of the last witness is concerned it is subject to your Honor's ruling that if it isn't connected the motion to strike will be sustained. It might still be connected by other witnesses—it is true that the last witness did not identify it—it might be connected by some other witness, but if it is not we propose when the Government has its case in to make our motion. * * *

Q. Go ahead and tell what happened.

A. Well, I came something about halfway and I heard the noise of a bullet some place nearby me.

Mr. HUBBARD.—If the Court please, it seems to me that before the witness testifies to any more detail he should be asked whether he recognized that boat or recognized the parties on it.

Mr. SMIZER.—I will ask that at the proper time.

The COURT.—I have indicated what the ruling will be—if it is not connected it will be stricken.

Mr. HUBBARD.—If the Court please, the witness has testified that he saw a boat. Now, he knows whether or not he recognized that boat, and if he knows that boat, or if he saw any of the parties there he can testify that he recognized them. If he did the testimony might go in, but to put in a lot of detail here of something that transpired before it is identified to the jury—

The COURT.—If he does not identify the boat it does not hurt you in any way whatsoever. How can it hurt you?

Mr. HUBBARD.—I do not know that it would, if the Court please.

The COURT.—If he does not know anything about what boat it was, or cannot identify the boat or the parties on it, it does not hurt you; consequently let counsel develop his case the way he wants to, then if it is not connected it will be stricken out. I cannot direct him as to what order he shall put his testimony in. [323]

Mr. HUBBARD.—I am inclined to think, if your Honor please, that testimony of this kind does have a tendency to hurt, even if it is afterward stricken out. We will save an exception to the testimony.

The COURT.—Proceed. * * *

Q. (By Mr. SMISER.) Now, I will ask you if you saw that boat that they tied up to that trap at that time—did you see the boat?

A. I saw the boat, yes.

Q. Do you know what boat that was?

A. No, not at that time.

Q. Well, did you afterwards in any way find out what it was?

A. Well, they took us into town here and we found a boat by the dock down here on Front street that seemed to be like it.

Q. I will ask you whether or not you recognized it as the same boat?

Mr. HUBBARD.—Now, if the Court please, I think I will object to the testimony. The witness has stated that he did not recognize the boat at that time.

The COURT.—I know, Mr. Hubbard, but you might see a thing at one time and then see it at another time and know it was the same thing.

Mr. HUBBARD.—He might come to the conclusion that the boat he saw several weeks later was the same boat, but his testimony is being admitted on the ground that he identify the boat.

The COURT.—He does not have to identify it at that time.

Mr. HUBBARD.—We will save an exception to the testimony on that ground, if the Court please, and on the further ground that the boat at the time it was recognized as he said it was in the hands of the United States Marshal and had been illegally seized by the United States Marshal.

The COURT.—What effect would that have?

Mr. HUBBARD.—I simply want to save an exception.

The COURT.—Very well.

Q. (By Mr. SMISER.) I will ask you whether or not you recognized it as the same boat, speaking at the time you came into Juneau here and saw the boat 'Diana'—I ask you if you recognized it as the same boat that was out at your trap on the 30th of June?

A. I would say it looks like that boat.

Q. Now, at the time you saw the boat at Juneau were there any other boats around except that, or was that the only one there?

A. Around our trap?

Q. No, was there any other boat, when you went to look at the boat at Juneau, the boat that you said looked like the one that was at your trap, were there any other boats around the dock at that time, or only the boat you were looking at?

A. No, I couldn't see any other looks like that boat—that was the nearest I could see around there.

Q. Were there any other boats that did not look like it?

Mr. HUBBARD.—Let me understand—he said, 'Yes, it looked the nearest like that of any,' he saw.

Mr. SMISER.—Suppose he did say it—what of it.

Mr. HUBBARD.—I want to understand what he said.

The COURT.—Yes that is what he said.

Q. Now, were there any other boats there when you were looking at it to find out what

boat it was—were there any other boats around there? [324]

A. Yes, there was—there was many boats around there. * * *

Mr. HUBBARD.—Now, if the Court please, I will move at this point to strike out the testimony of the witness on the ground that he has not identified the boat.

The COURT.—I think, Mr. Smiser, if that is as far as this witness can go, that it looked nearer like it than any other boat he saw, that it is not sufficiently connected.

Q. (By Mr. SMIZER.) Please make it as plain as you can whether this in your opinion was the same boat that was at your trap on the 30th of June.

Mr. HUBBARD.—If the Court please, I think I will object to that—the witness has testified.

The COURT.—Overruled.

A. I say it looks like it, the nearest I could see of all them boat around—the shape of the boat and the mast, and it looked almost the same.

Q. Can you state whether in your opinion it was the same boat or not?

Mr. HUBBARD.—Now, if the Court please, I will object to that question. The witness has stated that it looked like it, and it was the nearest of any boat there like it.

The WITNESS.—I couldn't swear to it it was the same boat.

Mr. HUBBARD.—Now, he is asking him to

give an opinion about it and he has stated the facts.

The COURT.—The last part of your objection is well taken first part is not. He cannot give his opinion—he can give his judgment. Now, I will ask this question—I know that you cannot swear positively that it was the same boat, but please state whether or not in your judgment it was the same boat.

A. It was—yes, it was, in my judgment.

Mr. HUBBARD.—We save an exception to that. The witness has stated that he could not swear to it, and it isn't now a question of his judgment and it isn't a question of his opinion.

The COURT.—Well, I am rather inclined to think that is well taken. He has testified that it looks like the boat but he couldn't swear to it. Now, that can go to the jury for what it is worth.

Q. Now, I will ask you, Mr. Hanson, whether you could tell at the time you heard these shots being fired from what direction they were coming?

A. Well, they came from the trap so far as we could judge it.

Q. It came from the trap?

A. From the trap, yes.

Q. Was that the trap where the boat was?

A. Yes, sir.

Mr. HUBBARD.—If the Court please, I do not like to keep interrupting all the time, but I object to it because it is immaterial. He has said he could not identify the boat.

The COURT.—He has identified it in a way, and I said it can go to the jury for what it is worth. I shall instruct the jury what all this evidence is admitted for—I can cover it by my instructions, I think. The objection is overruled.” [325]

5.

The Court erred in overruling the motion of defendant to strike out the testimony of the witnesses John Hanson and Homer Lee given in plaintiff's case in chief, for the reason that the evidence of said witnesses failed to in any way connect the defendant with the commission of any offense, which motion being by the Court denied, was duly excepted to and an exception allowed.

6.

The Court erred in overruling defendant's motion to strike all the testimony given by the witness, Dr. W. A. Borland, relating to matters and things occurring long after the commission of the offenses set up in the indictment, which motion, being by the Court denied, was duly excepted to and an exception allowed.

7.

The Court erred in overruling defendant's motion to strike all that portion of the testimony given by the witness, Alfred Knutson, referring to incidents happening on the 10th day of July, 1919, and long after the commission of the offenses set up in the indictment herein, which motion, being by the Court denied, was duly excepted to and an exception allowed.

8.

The Court erred in overruling defendant's motion to strike all the testimony given on behalf of plaintiff referring to matters and things and offenses committed on other days than the 8th day of July, 1919, that being the time definitely fixed by the witnesses for the plaintiff when the offenses set up in the indictment herein were committed, which motion was denied by the Court, to which ruling the defendant excepted and an exception was allowed.

9.

The Court erred in overruling defendant's motion for new trial to which ruling the defendant excepted and an exception was allowed. [326]

10.

The Court erred in pronouncing sentence and judgment against the defendant.

WHEREFORE the defendant below and plaintiff in error prays that the judgment of the District Court may be reversed.

O. P. HUBBARD,

HENRY RODEN,

Defendant's Attorneys.

Service of copy of within assignment of errors is hereby admitted this —— day of April, 1920.

JAMES A. SMIZER,

U. S. Attorney.

Filed in the District Court, District of Alaska, First Division. April 15, 1920. J. W. Bell, Clerk.
By ———, Deputy. [327]

[Caption and Title.]

Writ of Error.

The President of the United States to the Honorable,
the Judge of the District Court for the District
of Alaska, Division Number One, GREETING:

Because in the record and proceedings, as also in
the rendition of sentence and judgment of a plea
which is in said District Court before you, between
The United States of America, plaintiff, and Al
Weathers, defendant and plaintiff in error, as by his
complaint appears.

We, being willing that said error, if any have been,
should be duly corrected and full and speedy justice
done to the parties aforesaid in this behalf, do com-
mand you if the judgment be therein given, that then,
under your seal distinctly and openly, you send the
record and proceedings aforesaid with all things
concerning the same to the United States Circuit
Court of Appeals for the Ninth Circuit together with
this writ, so that you have the same at the city of San
Francisco, in the State of California, on the 14th day
of June, 1920, in the said Circuit Court of Appeals
to be then and there heard, that the record and pro-
ceedings aforesaid being inspected, the said Circuit
Court of Appeals may cause further to be done
thereof to correct that error, what of right and ac-
cording to law and custom of the United States should
be done.

WITNESS the Honorable EDWARD D. WHITE,
Chief Justice of the Supreme Court of the United

States of America, this 15th day of April, 1920.

Allowed.

ROBERT W. JENNINGS,

District Judge.

Filed in the District Court, District of Alaska,
First Division. Apr. 15, 1920. J. W. Bell, Clerk.
By _____, Deputy. [328]

[Caption and Title.]

Citation.

To James A. Smiser, United States District Attorney,
District of Alaska, Division Number One,
GREETING:

You are hereby cited and admonished on behalf of the plaintiff in error, Al Weathers, to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, on the 14th day of June, 1920, pursuant to a writ of error filed in the office of the clerk of the District Court for the District of Alaska, Division Number One, wherein Al Weathers is plaintiff in error and the United States of America is defendant in error, to show cause, if any there be, why the sentence and judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiff in error in that behalf.

Dated and done in open court this 15th day of April, 1920.

ROBERT W. JENNINGS,
Judge of the District Court for the District of Alaska,
Division Number One.

Service admitted this 15th day of April, 1920.

JAMES A. SMISER,
United States District Attorney, District of Alaska,
Division Number One.

Filed in the District Court, District of Alaska,
First Division. Apr. 15, 1920. J. W. Bell, Clerk.
By —————, Deputy. [329]

[Caption and Title.]

Stipulation as to Printing Record.

It is stipulated between the attorneys for the parties respectively, that in printing the record in this case for use in the United States Circuit Court of Appeals for the Ninth Circuit, all captions should be omitted after the title of the cause has been once printed, and the words "Caption and Title" and the name of the paper or document should be substituted therefor; also, that after printing the indorsements and file-marks on the indictment, bill of exceptions, record in the Appellate Court, the indorsements other than file-marks on all other papers should be omitted, and the word "Indorsements" printed in lieu thereof.

All other parts of the record should be printed,

Dated this 17th day of April, 1920.

O. P. HUBBARD,

HENRY RODEN,

Attorneys for Plaintiff in Error.

JAMES L. BACKSTROM,

Asst. United States District Attorney, for the Defendant in Error.

Filed in the District Court, District of Alaska,
First Division. April 17, 1920. J. W. Bell, Clerk.
By —————, Deputy. [330]

[Caption and Title.]

Praeceptum for Transcript of Record.

The clerk of the above-entitled court will please prepare and certify a copy of the record in this action as follows:

1. Indictment.
2. Bill of exceptions.
3. Verdict.
4. Judgment.
5. Petition for writ of error.
6. Order allowing writ of error, and fixing amount of supersedeas bond.
7. Assignment of error.
8. Writ of error.
9. Citation.
10. Stipulation as to printing record.
11. This praecipe.
12. Order extending return day of writ of error.

O. P. HUBBARD,

HENRY RODEN,

Attorneys for Defendant or Plaintiff in Error.

Service admitted this 17th day of April, 1920.

JAMES L. BACKSTROM,
Asst. United States Attorney.

Filed in the District Court, District of Alaska,
First Division. April 17, 1920. J. W. Bell, Clerk.
By —————, Deputy. [331]

[Caption and Title.]

Order Extending Return Day of Writ of Error.

Upon application of the defendant below and plaintiff in error, and for good cause shown,—

IT IS ORDERED that the return day of the writ of error allowed in this case on the 15th day of May, 1920, be extended to the 15th day of June, 1920.

Dated this 17th day of April, 1920.

ROBERT W. JENNINGS,
District Judge.

Copy received and service admitted this 17th day of April, 1920.

JAMES L. BACKSTROM,
Asst. United States Attorney.

Filed in the District Court, District of Alaska,
First Division. April 17, 1920. J. W. Bell, Clerk.
By —————, Deputy. [332]

[Caption and Title.]

**Order Extending Time to and Including August 15,
1920, to File Transcript of Record.**

Now, at this day, comes the United States of Amer-

ica by Assistant United States District Attorney, J. L. Backstrom, and the defendant, Al Weathers, by O. P. Hubbard, of counsel, and thereupon this cause comes on to be heard upon the motion of said defendant for the extension of time in which to file the transcript herein in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing to the Court from the statement of the clerk of this court that the *addition* time is required in which to prepare the transcript for filing in the said Circuit Court of Appeals, it is ordered that the time heretofore granted in which to file said transcript in said United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended to August fifteenth, 1920.

Dated this fifteenth day of June, A. D. 1920.

ROBERT W. JENNINGS,

Judge.

Entered Court Journal No. H, page 240.

Filed in the District Court, District of Alaska, First Division. Jun. 15, 1920. J. W. Bell, Clerk. By ———, Deputy. [333]

[Caption and Title.]

Order Extending Time to and Including August 25, 1920, to File Transcript of Record.

Now, at this date, comes the United States of America by James A. Smiser, United States District Attorney, and the defendant, Al Weathers, by O. P. Hubbard, of counsel, and thereupon this cause comes on

to be heard upon the motion of said defendant for an extension of time in which to file the transcript herein in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing to the Court from the statement of counsel for the defendant and from the clerk of this court that the transcript of the record has just been completed, and that additional time is required in which to prepare the transcript for filing in the said Circuit Court of Appeals, it is ordered that the time heretofore granted in which to file said transcript in said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, be and the same is hereby extended to August twenty-fifth, A. D. 1920.

Dated this fifth day of August, 1920.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division. Aug. 5, 1920. J. W. Bell, Clerk.
By _____, Deputy.

Entered Court Journal No. H, page 289. [333½]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
District of Alaska,
Division No. 1,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that

the foregoing and hereto attached 333 pages of typewritten matter, numbered from one to 333½, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of attorneys for defendant and plaintiff in error, on file in my office and made a part hereof, in Cause No. 1346-B, wherein the United States of America is plaintiff and defendant in error and Al Weathers is defendant and plaintiff in error.

I further certify, that the said record is by virtue of the writ of error and citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to one hundred fifty-three and 45/100 dollars (\$153.45) has been paid to me by counsel for plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 16th day of August, 1920.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

[Endorsed]: No. 3544. United States Circuit Court of Appeals for the Ninth Circuit. Al Weathers, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon

Writ of Error to the United States District Court of
the District of Alaska, Division No. 1.

Filed August 24, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.